

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)

v.)

CRIMINAL CASE NO. RDB-21-0054

EGHOSASERE AVBORAYE-
IGBENEDION)

Defendant.)

Wednesday, June 14, 2023
Courtroom 5D
Baltimore, Maryland

JURY TRIAL - Volume IV of V

BEFORE: THE HONORABLE RICHARD D. BENNETT, Senior Judge

On Behalf of the United States:

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(Computer-aided transcription of stenotype notes)

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1 P R O C E E D I N G
2 Wednesday, June 14, 2023
3 9:52 a.m.

4 THE COURT: I understand there's some issues we need
5 to address before the jury comes in; is that correct?

6 MR. GUILLAUME: Yes, Your Honor. Good morning. I
7 have raised some issues with the government this morning and so
8 I apologize for the delay.

9 THE COURT: That's all right.

10 MR. GUILLAUME: We're trying to work out a couple of
11 things, but I think --

12 THE COURT: Good morning, Mr. Igbinedion. You may be
13 seated. You may be seated.

14 THE DEFENDANT: Good morning, sir.

15 MR. GUILLAUME: One thing that -- I think we're
16 working on a resolution of one thing which wouldn't be until
17 later this afternoon, so I think I'll leave that until later if
18 that's okay.

19 MR. DELANEY: Sure.

20 MR. GUILLAUME: The only other thing, Your Honor, is
21 that in light of Ms. English's testimony yesterday, reviewing my
22 notes last night, conferring with my client, there is a witness
23 that was identified in the voir dire who has given grand jury
24 testimony who I believed was local. It wasn't my witness but it
25 was a witness -- her name was included.

1 THE COURT: Okay.

2 MR. GUILLAUME: It's not local, she's -- in fact, her
3 name is Kamisha Jones. She's, in fact, based in Florida.

4 THE COURT: Okay. Who is this person?

5 MR. GUILLAUME: Now I have -- Kamisha Jones is an
6 ex-girlfriend of Mr. Ulysse.

7 THE COURT: Okay. Hold on one second. Wait a minute.
8 And you indicate that she was listed not necessarily as a
9 witness by either you or the government, but her name was listed
10 on the -- previously on the voir dire; is that right?

11 MR. GUILLAUME: Briefly on the voir dire. I honestly
12 didn't know if the government was calling her or not.

13 THE COURT: I'm just looking at the voir dire. Hold
14 on one second. Kamisha Jones, yes. We asked if anyone knew
15 Kamisha Jones.

16 MR. GUILLAUME: I never talked with them about this
17 previously because, I guess, the testimony had to shake out a
18 certain way. And I just assumed, potentially, that they never
19 told me they were going to call her but I assumed maybe they
20 would. She is, in fact, based in Florida. In light of Ms.
21 English's testimony, I am considering calling her as a witness
22 myself, but there are obvious logistical concerns that we have.

23 THE COURT: Yeah.

24 MR. GUILLAUME: My investigator is attempting to
25 locate her. We don't have -- her contact information was not

1 provided --

2 THE COURT: Okay.

3 MR. GUILLAUME: -- to us so we are attempting to
4 locate her now.

5 THE COURT: Did she give grand jury testimony?

6 MR. GUILLAUME: She did give grand jury testimony.

7 THE COURT: Then she would have listed her home
8 address, and the government had access to her to call her as a
9 grand jury witness, so the government obviously knows how to get
10 ahold of her.

11 MR. GUILLAUME: I think they don't want to necessarily
12 give it.

13 THE COURT: Mr. Delaney, the government called Kamisha
14 Jones as a grand jury witness?

15 MR. DELANEY: Yes, Your Honor, that's correct.

16 THE COURT: So you obviously have contact information
17 for her?

18 MR. DELANEY: That's, correct Your Honor.

19 THE COURT: And then the government will give you that
20 information. Or the government can make contact this morning.
21 It's -- they've got -- the government has a cell phone number,
22 an email address. There are ways the government can contact
23 Kamisha Jones, and I'll instruct the government to contact her
24 immediately this morning.

25 MR. GUILLAUME: Thank you, Your Honor.

1 I do want to serve her. I can work on getting a
2 process server to serve her in Florida once we get that
3 information.

4 THE COURT: Well, I think we can cut right to the core
5 of this. If we locate her, we will take -- it seems to me that
6 if you have issues with respect to getting her up here, it seems
7 to me -- in the same fashion we had Rule 15 deposition notices,
8 we can just depose her by telephone as was done with some of the
9 victims in this case.

10 MR. GUILLAUME: That's another compromise that I would
11 be okay with.

12 THE COURT: Okay. And that's fine. And I don't see
13 any difficulty, one, with contacting her. Pretty confident if
14 the government wanted to contact her and call her as a witness,
15 they'd be able to contact her, so the government can contact her
16 at my request, and we can arrange for a telephone, Rule 15
17 examination on the telephone, just as was done with some of the
18 victims in this case.

19 Any reason why that can't be done from your point of
20 view, Mr. Delaney?

21 MR. DELANEY: Your Honor, the government will comply
22 with the Court's order to contact the witness and will not
23 object to the defendant's motion if he so chooses.

24 THE COURT: This is a motion for a Rule 15. I think
25 it's -- if I'm not mistaken, Rule 15 was the rule that we

1 proceeded under here, and we can do the same thing and you all
2 can conduct an examination of her. You all have to figure out
3 when we're going to do it, because we're right on schedule with
4 this trial, and do it accordingly. That's fine.

5 So the government will get on this right away and
6 we'll find out during the break later this morning the
7 government's success or lack thereof. And it may be that I get
8 her on the telephone here on the record and indicate that we
9 need to have her just sit for a Rule 15 deposition, video
10 deposition.

11 MR. GUILLAUME: Thank you, Your Honor.

12 And just as far as a logistical thing, I know the
13 government plans to probably conclude today, if not before the
14 end of the day, and then the defense would have their time to
15 put on the case.

16 THE COURT: Yeah.

17 MR. GUILLAUME: I'm hopeful that we can get it -- I
18 don't want the Court to think that I'm delaying anything, but
19 this is specifically in light of Ms. English's testimony
20 yesterday, that is why --

21 THE COURT: That's fine. No problem. You don't have
22 to explain to me why, that's perfectly fine and we'll do it that
23 way.

24 what other issues do we have?

25 MR. GUILLAUME: We have one, I think we're going to

1 come to a resolution on, Your Honor. I think we probably will
2 be able to get there.

3 THE COURT: That's fine. That's one issue we've dealt
4 with, and we'll deal with it accordingly. So thank you all very
5 much. And with that, we're going to bring the jury in here.
6 And the first witness here is going to be -- as I understand it
7 the first witness is going to be Eileen Ricci. Eileen Ricci
8 will be the first government witness here.

9 Government ready for us to bring the jury in?

10 MR. DELANEY: We are, Your Honor. Thank you.

11 MS. GOO: Yes, Your Honor.

12 (Jury entered the courtroom at 9:58 a.m.)

13 THE COURT: Good morning, everyone. Sorry to keep you
14 waiting again. We did have another preliminary evidentiary
15 matter that may involve the matter of a videotape of another
16 witness, and so we have to address that, but that's why we had
17 you sitting back there. So thank you all very much. You all
18 may be seated.

19 And with that, we're ready to continue with the
20 government's case and the next witness will be Ms. Eileen Ricci.

21 MR. DELANEY: Thank you, Your Honor.

22 THE COURT: Good morning. We'll have you come over
23 here, please, and we'll have you be sworn. Thank you.

24 THE CLERK: Your Honor, may I hand her the mic?

25 THE COURT: That's perfectly fine.

1 Thank you very much.

2 Good morning, ma'am. And you'll swear the witness,
3 please.

4 (EILEEN RICCI, duly sworn.)

5 THE CLERK: While speaking clearly into that
6 microphone, can you please state your full name and spell your
7 last name for the record?

8 THE WITNESS: Eileen Ricci. Ricci is R-i-c-c-i.

9 THE CLERK: Thank you.

10 THE COURT: You may proceed, Mr. Delaney.

11 MR. DELANEY: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. DELANEY:

14 Q. Good morning, Ms. Ricci. Where are you from?

15 A. I'm from Port St. Lucie, Florida.

16 Q. And how long have you lived there for?

17 A. A little over 21 years.

18 Q. And if you don't mind my asking, how old are you?

19 A. Okay. 75.

20 Q. And are you married?

21 A. I'm a widow.

22 Q. I'm sorry to hear that. When did your husband pass?

23 A. My husband passed away July 25th, 2021.

24 Q. And what was his name?

25 A. His name was Salvatore Ricci.

1 Q. And can you tell us a little bit about him?

2 A. Well, he was a marine, Italian, born in Brooklyn, New
3 York.

4 Q. What was his occupation?

5 A. He had a lawn business.

6 Q. At the time he passed was he still employed or was he
7 retired?

8 A. He was retired.

9 Q. Do you have any children, ma'am?

10 A. I have two.

11 Q. And any grandchildren?

12 A. I have six grandchildren, five great grandchildren,
13 and number six is on its way.

14 Q. Congratulations.

15 Ma'am, did there come a time in 2018 where you and
16 your husband became victims of a fraud?

17 A. Yes.

18 Q. Can you tell us what happened?

19 A. Well, I guess it was like eleven o'clock in the
20 morning, ten, eleven o'clock. My phone rang, I answered it. A
21 young man told me that he was a detective and that my grandson
22 had been arrested on drug charges.

23 Q. Which grandson was it?

24 A. My granddaughter Jessica's husband.

25 Q. So was the husband -- so your granddaughter's name is

1 Jessica, and it was her husband?

2 A. Right.

3 Q. And what's his name?

4 A. His name was Gurken.

5 Q. Is that spelled G-u-r-k-e-n?

6 A. Yes.

7 Q. Gurken?

8 A. Yes.

9 Q. Okay. So what did the caller tell you about your
10 granddaughter's husband Gurken?

11 A. That he requested that we do not say anything to
12 Jessica, that he didn't want her to know and that his bail was
13 going to be \$7,000. And if we got it to the judge by 9:30 the
14 next morning he would be released from jail and charges would be
15 dropped for \$7,000.

16 Q. So what did you do?

17 A. 7,000 to make a decision like that on my own was a
18 little much, so I got my husband on the extension and my husband
19 spoke to the young man.

20 Q. And you were both on the call at the time?

21 A. We were both on the phone.

22 Q. Okay.

23 A. The young man repeated the same thing and told us how
24 to get the money to him. We were to get \$7,000 in one hundred
25 dollars bills, put a hundred dollars between each page of a

1 magazine, put the magazine in a brown bag and then mail it,
2 FedEx it down to him.

3 Q. So what did you do?

4 A. Well, my husband agreed to it so I went to the bank
5 and got \$7,000 in one hundred dollars bills.

6 Q. So you went to the bank and got \$7,000 in one hundred
7 dollars bills. And then what happened next?

8 A. I went home and proceeded to put the money in the
9 pages of a magazine.

10 Q. Do you remember what kind of magazine it was?

11 A. I believe it was Better Homes & Garden.

12 Q. Okay. And after you packaged up the one hundred
13 dollars bills what did you do next?

14 A. I put it in a brown envelope and my husband and I
15 proceeded to go send it off.

16 Q. And did anything happen on the way to try and send it?

17 A. Yeah. I had a car accident.

18 Q. Okay. So you got in a car accident on the way to
19 sending the package?

20 A. Yes.

21 Q. I'm going to put up on the screen -- nonetheless, the
22 package was ultimately sent, right?

23 A. Yes.

24 Q. Let's put up on the screen Government's Exhibit 45.
25 Can you read for us -- let's -- first off, is that your

1 husband's name there that I just circled?

2 A. Yes.

3 Q. And the recipient, can you read for us the recipient?

4 A. Jordan Hall.

5 Q. Attention?

6 A. Yes. Joseph Brown.

7 Q. Can we blow that up a little? A little bit,
8 Mr. Kerrigan. Thanks very much.

9 And who was Joseph Brown again?

10 A. He was supposed to be the judge, I believe.

11 Q. Judge Joe Brown?

12 A. Judge Joe Brown.

13 Q. And the address?

14 A. Was Fort Lauderdale.

15 Q. What specific address?

16 A. I think it was 10580 Northwest 29th Manor.

17 Q. Okay. And the date of delivery down here?

18 A. Was 7/7/2019. '18.

19 Q. What happened after you sent the mail? After the
20 mailing was sent what happened next?

21 A. Well, the very next day I ended up in the hospital.

22 Q. Okay. Did you subsequently learn that your
23 granddaughter's husband had not been incarcerated?

24 A. Yes. I consequently learned that my grandson and my
25 granddaughter were in California at Disney world.

1 Q. And did you subsequently learn that your husband
2 actually reached out to the recipient of the package?

3 A. Yes, I did. My husband called and told me that he
4 did.

5 Q. Okay.

6 MR. DELANEY: Court's indulgence. Nothing further at
7 this time, Your Honor.

8 THE COURT: Thank you very much, Mr. Delaney.

9 Cross-examination, Mr. Guillaume.

10 MR. GUILLAUME: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GUILLAUME:

13 Q. Good morning, ma'am.

14 A. Good morning.

15 Q. Ma'am, I just have a couple of questions for you.
16 First, congratulations on your latest grandchild, or great
17 grandchild.

18 A. Great grandchild.

19 Q. And the person that you spoke with back then, did they
20 know the names of all of your family members?

21 A. Yes. Yes, they did, which kind of made me think that
22 they were telling the truth because they knew -- because
23 everybody called my grandson G because of his last name, his
24 name being difficult. But they knew his name and could
25 pronounce it the right way and -- it kind of made me feel like

1 they knew what they were talking about.

2 Q. Right. Thank you, ma'am. I don't have any other
3 questions for you. Thank you for coming.

4 THE COURT: Thank you very much, Mr. Guillaume.

5 And thank you Mrs. Ricci, you may step down now.
6 We'll assist her to getting back to her wheelchair if you can.

7 Thank you, Ms. Goo.

8 And you should not discuss your testimony with anyone
9 in the unlikely event you're called back to the witness stand to
10 testify. Thank you very much.

11 THE WITNESS: Thank you, Your Honor.

12 MR. DELANEY: And the government's next witness?

13 THE COURT: It'll be Arlene Grant; is that correct?

14 MR. DELANEY: Thank you, Your Honor. Thank you, Ms.
15 Grant. If you'll come forward here over the to Clerk's desk to
16 be sworn. Thank you very much.

17 (ARLENE GRANT, duly sworn.)

18 THE CLERK: While speaking clearly into the
19 microphone, can you please state your full name and spell your
20 last name for the record?

21 THE WITNESS: Arlene Grant. Last name G-r-a-n-t.

22 THE CLERK: Thank you.

23 THE COURT: You may proceed, Mr. Delaney.

24 MR. DELANEY: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. DELANEY:

2 Q. Good morning, ma'am. Where are you from?

3 A. Fort Lauderdale, Florida.

4 Q. And what do you do for a living?

5 A. I am a -- I own a nursing school. I'm a CO of a
6 nursing school.

7 Q. And are you a nurse practitioner?

8 A. I am also a nurse practitioner with a doctorate
9 degree.

10 Q. How long have you been a nurse for?

11 A. About -- maybe about 30 years.

12 Q. And usually I try not to ask this question in court,
13 but I think it's relevant to the proceeding here. Can you give
14 us the address at which you reside?

15 MR. DELANEY: And perhaps we could seal this portion
16 of the record after the fact?

17 THE COURT: Yeah, that would be fine. That would be
18 fine.

19 THE WITNESS: [REDACTED]

20 [REDACTED].
21 BY MR. DELANEY:

22 Q. I want to draw your attention to the date of July 7th,
23 2018. Do you remember that date? Can you tell us what happened
24 on that date?

25 A. Okay. On that day I received -- I actually picked up

1 an envelope at my front door.

2 Q. And how was the envelope delivered?

3 A. I'm sorry?

4 Q. How was the envelope delivered?

5 A. I think it was -- it was in a packet. I think it was
6 delivered by UPS; I think.

7 Q. Okay.

8 A. Yeah, I picked up an envelope. And that's -- and I
9 looked on the envelope it has -- it had a name on it but my
10 address. The name, as I can recall, it says Judge Joe Brown.
11 And I went -- I looked at it, it said important, must be
12 delivered today. So I got a little concerned, and I looked at
13 the return address and there was a telephone number, so I called
14 that person to say, you know, we don't have anybody at my
15 address by that name; however, you know, how can I help you with
16 this and that it's so important.

17 And the person said please hold onto it for me. And
18 the address actually was in -- to be -- the return address was
19 in Port St. Lucie. So I said that if you want, I'm seeing my
20 mother in a few days, I can deliver it, take it back to you.
21 And the person said please hold onto it and --

22 Q. So then what happened next?

23 A. Shortly after I got the call, there was a knock on my
24 door and a young man came to the door and said, you know, a
25 package was delivered at my address for him. And I questioned

1 him. I asked him why are you -- you know, I asked him what his
2 name was and I -- and I asked him why do you have a package
3 being delivered to my house? And, you know, and he said my kids
4 gave him permission to do that.

5 He also said that -- I said what's in the package,
6 because I didn't know what was in it. He said it's transcripts
7 that were in the package. I -- I -- like a few minutes later,
8 the person who I called asked me not to give the packet to the
9 person that's at the door. And, you know, I was holding the
10 packet, the young man was holding the packet. He said let me
11 see what it's saying, and then he grabbed it and actually ran.

12 I ran after the car and I asked -- I was saying give
13 me the packet, it's not yours, but he drove away. And, you
14 know, I then got a call from the Port St. Lucie Police and --
15 who said please call the Sunrise Police.

16 Q. Okay. And subsequent to this were you asked to review
17 a series of photographs to consider with regard to who was the
18 person who took the package from you?

19 A. Yes, I was.

20 Q. Can we put up Government's Exhibit 50 on the screen.
21 And can we click through the pages of this and flip through them
22 once slowly?

23 Did you ultimately select one of these photographs?

24 A. Yes, I did.

25 Q. Okay. If we can skip forward to page -- let's start

1 at page 2. And page 3. Okay. And we can move forward,
2 Mr. Kerrigan.

3 It appears -- what are we looking at on the screen
4 right now?

5 A. Circle -- well, on somebody's face with a circle and I
6 have yes and my initials and the date.

7 Q. And who circled and wrote initials on that page?

8 A. I did.

9 Q. Okay. And what's the date?

10 A. 8/8/2018.

11 Q. And just so we can -- can we scroll through to see if
12 there are additional pictures there as well?

13 And, of course, we're looking at other pictures. Are
14 those your initials writing no behind the other pictures?

15 A. Correct.

16 Q. Okay. The individuals you spoke with on the phone
17 that day, can you tell us anything about whether it was a male
18 or a female and anything about the age?

19 A. It was a male, older, sounded older; like an older
20 person, like maybe 70s, 80s.

21 Q. Okay.

22 MR. DELANEY: No further questions, Your Honor.

23 THE COURT: Thank you, Mr. Delaney.

24 Cross-examination Mr. Guillaume?

25 MR. GUILLAUME: No, Your Honor.

1 Good morning, ma'am.

2 THE COURT: Thank you very much, Ms. Grant, you may
3 step down. You should not discuss your testimony with anyone in
4 the unlikely event you're called back to the witness stand.
5 You're excused. Thank you very much.

6 THE WITNESS: Thank you.

7 MR. DELANEY: Your Honor, what we would like to -- go
8 right ahead.

9 THE COURT: Next witness will be, as I understand it,
10 Mr. Richard Provolt and that's by video?

11 MR. DELANEY: Yes, Your Honor. And following that
12 witness we'd like to go ahead and play the other video for
13 Mr. Carper as well. That's actually a better order than I
14 thought.

15 THE COURT: So you want to go with Carper first or
16 Provolt first?

17 MR. DELANEY: Mr. Provolt is fine.

18 THE COURT: We have Provolt going next, we'll proceed
19 with that. How long is this video deposition?

20 MR. DELANEY: Between 10 and 15 minutes.

21 MS. GOO: Mr. Provolt is 15 minutes; Mr. Carper is 12
22 minutes.

23 THE COURT: Okay. You were going to call FBI agents
24 afterwards, before Mr. Carper, but you're going to go -- you're
25 going to have Mr. Provolt and then Mr. Carper, right?

1 MR. DELANEY: Mr. Provolt, Mr. Carper, and then we'll
2 proceed in the order we were going.

3 THE COURT: That's fine. That's fine.

4 You're now playing deposition video of Richard
5 Provolt, Government's Exhibit 6. And is there a deposition
6 transcript of Mr. Provolt that you're going to be distributing
7 to the jury or not?

8 MR. DELANEY: We have made the determination not to do
9 so.

10 THE COURT: The jury can listen attentively and this
11 is Government's Exhibit number 6.

12 (Video deposition of Richard Provolt was played.)

13 THE COURT: Alternate Juror No. 1, we are trying to
14 get you a glass of water. Are you okay?

15 ALTERNATE JUROR NO. 1: Yes.

16 THE COURT: Next witness, Mr. Delaney. Next video
17 we're going to see is Victim Carper; is that right?

18 MR. DELANEY: That's correct, Your Honor.

19 THE COURT: Charles Carper.

20 MR. DELANEY: For the benefit of the record, this
21 video will be Exhibit 4.

22 (Video deposition of Charles Carper was played.)

23 THE COURT: Thank you, counsel.

24 And with that, next witness, as I understand it, is going to be
25 Special Agent Michael Fowler of the FBI; is that right?

1 MR. DELANEY: Yes, Your Honor. Thank you.

2 THE COURT: Agent Fowler, if you'll come forward,
3 please, sir, and be sworn.

4 THE CLERK: Remain standing and raise your right hand
5 for me, please.

6 (MICHAEL FOWLER, duly sworn.)

7 THE CLERK: while speaking clearly into the
8 microphone, can you please state your full name and spell your
9 last name for the record?

10 THE WITNESS: Michael Fowler, F-o-w-l-e-r.

11 THE CLERK: Thank you.

12 MR. DELANEY: May I proceed, Your Honor?

13 THE COURT: Yes, you may.

14 DIRECT EXAMINATION AS TO QUALIFICATIONS

15 BY MR. DELANEY:

16 Q. Good morning. Can you tell us what you do for a
17 living?

18 A. Yep. I'm a special agent with the Federal Bureau of
19 Investigation. I'm currently assigned to the Cellular Analysis
20 Survey Team name known as CAST, spelled C-A-S-T.

21 Q. Can you tell us a little bit about your educational
22 background?

23 A. Sure. I have Bachelor's of Arts from American
24 University, and masters of science from the University of
25 Maryland, University College.

1 Q. Do you have -- what's your masters in science in?

2 A. Cyber security.

3 Q. Do you have any other job experience?

4 A. Yes. So prior to becoming a special agent with the
5 FBI I was employed as an intelligence analyst with the Federal
6 Bureau of Investigation. I worked at FBI headquarters where I
7 was assigned to the cyber division. So I worked what we called
8 going dark initiative, which was a lot of encryption issues.

9 Also during my time with the FBI I served as an
10 adjunct professor at the University of Maryland, University
11 College where I taught the undergraduate cyber security program.

12 Q. And what point in time did you become a special agent
13 with the FBI?

14 A. Yes. So June of 2010 was the intelligence analyst,
15 where I started my employment with that position, and then March
16 of 2016 I converted to the special agent position.

17 Q. And what were your assignments when you became a
18 special agent?

19 A. So first and foremost, I went through new agent
20 training in Quantico, Virginia, that's a 20-week program.
21 During that time you're assigned your first office of
22 assignment, which for me was the Baltimore Division. Once I got
23 to the Baltimore Division, I worked on the Cyber Crimes Squad so
24 I investigated criminal computer intrusions as well as cyber
25 stalking cases.

1 After about two years of doing that, I rotated over to
2 the Joint Terrorism Task Force where I investigated national
3 security cases such as homegrown violent extremism. And then it
4 was at that point, in June of 2019, that I started my training
5 to become CAST certified. Again, the Cellular Analysis Survey
6 Team.

7 Q. So what is the Cellular Analysis Survey Team or CAST?

8 A. To provide three main functions, the first being
9 historical cell record analysis. So at a minimum, when you make
10 or receive a phone call your cell phone company, whether it's
11 AT&T, Verizon, T-Mobile, or several years ago Sprint, would
12 maintain the date and time that that activity occurred, who was
13 calling who, and then the specific cell tower and the side of
14 that cell tower that was being used to facilitate that activity.
15 So for us in the law enforcement setting, we're able to show the
16 general geographic area that device was when a particular
17 activity occurred.

18 Secondly, we'll do what we call a real-time analysis.
19 So working those same types of records, but typically any an
20 exigent circumstance like a missing child. So we'll pull those
21 records from providers during that exigent circumstance, and
22 direct an investigative team of where to go locate a device, and
23 ultimately that missing individual.

24 And then the last function we have is providing
25 training on our methodology and practices to federal, state,

1 local, and even international law enforcement.

2 Q. All right. Of those three functions I want to focus
3 on one of them today, historical cell record analysis. Tell us
4 a little bit about historical cell site information.

5 A. Sure. So I mentioned, every time you make or receive
6 a phone call, at a minimum your cell phone company is recording
7 the date and time that that occurred, who is calling who, the
8 tower that's being utilized, and the side of the tower that's
9 being utilized and the side of the tower that's being utilized
10 to facilitate that activity.

11 Every carrier maintains that in what's known as a call
12 detail record or CDR. That's a snapshot of a particular phone
13 number's activity over a period of time, which contains that
14 information as to date, time, originating number, terminating
15 number, tower, and side of the tower.

16 Now, every carrier also maintains what's known as a
17 master tower list. That master tower list identifies exact
18 latitude and longitude point, where is a tower is located, and
19 then the degree orientation for each side of that tower.

20 Now, each carrier is going to have a unique numbering
21 convention for the towers in their network. So for Sprint, for
22 instance, if we have Tower 1, 2, 3, 4 in the market of
23 Baltimore, Tower 1, 2, 3, 4 is only going to be located at that
24 latitude/longitude point in Baltimore.

25 And then say we had side one of that tower being

1 utilized, we might have a zero degree orientation on that master
2 tower list. We then know the exact latitude and longitude point
3 of the tower, and we know the degree that that tower is oriented
4 when that device utilizes that tower.

5 Q. And so what, specifically, can you do in a law
6 enforcement setting with that information?

7 A. Yeah, we're going to show the general geographic area
8 that device is in order to connect to that tower and that side
9 of the tower. So the reason we use that master tower list is to
10 not only do that correlation from the call detail record, but
11 also to show the adjoining towers in the area which allows us to
12 form our opinion as to the coverage of the tower and the side of
13 the tower that is being utilized.

14 Q. Do you have training in cell record analysis?

15 A. I do, yes.

16 Q. What type of training?

17 A. So to become CAST certified it's a four-course
18 certification program. I mentioned I started it in June of
19 2019, and that's when I attended the CAST basic course. So
20 you're learning at a very high level the types of records that
21 are maintained, like that call detail record, by the cell phone
22 companies, and how to do a basic analysis of those records.

23 Every course you're assessed along the way, so if you
24 pass that class, you go on to what's known as the advanced
25 course, where you're working with the same types of records but

1 doing just advanced analytics of those, and also learning how to
2 take your opinions and conclusions based upon your analysis and
3 put it into a formal report, like I've done for my testimony in
4 this case.

5 After that you go on to what's known as the field
6 training exercise, or FTX for short. I mentioned the example of
7 a missing child, for instance, an Amber alert. The whole
8 purpose of that FTX is to simulate those high stress
9 environments where you have to work through the records very
10 quickly to ultimately direct an investigative team of where to
11 locate a device and that missing individual.

12 Then last part is our two course certification
13 program, certification course, sorry. So the first part of that
14 you're learning from professors from the Ford Institute of
15 Technology as to how radio frequency is actually implemented
16 across the globe; so how our phones actually work. And then
17 you're learning from the cell phone companies themselves. So
18 Verizon, T-Mobile, as well as AT&T will bring in their network
19 engineers as well as custodian of records and meet with us and
20 discuss their particular companies.

21 So we meet with individuals who produce the records to
22 us under our legal authority, and then we also meet with those
23 engineers who are responsible with deploying the network,
24 maintaining it, and ensuring its operational 24/7/365. Then the
25 last part of certification is working a case from the ground up

1 and testifying in a moot court scenario.

2 So I started that in June of 2019, completed it in
3 January of 2021 as courses are only offered so often. But
4 during that time I was working under a mentorship program with
5 the certified CAST asset who was in the Baltimore Division prior
6 to me. So by the time I completed my certification I had
7 already worked hand-in-hand with him on numerous cases.

8 Q. Are you familiar with the cellular technologies
9 utilized by major cellular providers in the United States?

10 A. Yes.

11 Q. Are you familiar with records kept by providers,
12 specifically Sprint and T-Mobile?

13 A. Yes.

14 Q. Do you utilize call detail records and other cellular
15 records related -- other related records to locate devices and
16 ultimately locate people?

17 A. Yes.

18 Q. When would you use something like this?

19 A. So in real-time it's going to be those exigent
20 circumstances like an Amber Alert, Silver Alert for an elderly
21 individual, Green Alert for a service member where there's
22 mental health concerns, or even a fugitive situation.

23 Q. How many times would you say you've analyzed call
24 record details before?

25 A. So in total, January of '21, once I started tracking

1 that number, once I completed my certification, it's been over
2 400 cases. Each case has at least one phone, some have upwards
3 of 12 to 13 at times.

4 Q. Have you been qualified as an expert in both federal
5 and state court previously?

6 A. I have, yes.

7 Q. How many times have you been qualified in federal
8 court?

9 A. Over three times. I believe it's four or five times.

10 Q. And in state court?

11 A. Over 40 times.

12 Q. Have you given training in the field as well?

13 A. I have, yes.

14 MR. DELANEY: The United States offers Special Agent
15 Michael Fowler in the field of historical cellular record
16 analysis.

17 THE COURT: Yes. Is there any voir dire on this Mr.
18 Guillaume?

19 MR. GUILLAUME: No, Your Honor.

20 THE COURT: Ladies and gentlemen, let me explain this
21 to you. Under Rule 702 of the Federal Rules of Evidence,
22 experts may give their opinion on a matter. Generally witnesses
23 are not allowed to give their opinion. If one is qualified as
24 an expert, he or she is permitted to give their opinion. It's
25 still up to you as members of jury to accept or reject that

1 opinion, but the person is allowed to give an opinion. It
2 doesn't mean the court is certifying the opinion, it means the
3 witness is allowed to give an opinion.

4 This witness has been qualified under Rule 702 of the
5 Federal Rules of Evidence as an expert with respect to cellular
6 phone analysis, and he's permitted to give his opinion.

7 You may proceed, Mr. Delaney.

8 MR. DELANEY: Thank you very much, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. DELANEY:

11 Q. Special Agent Fowler, when I pick up my -- when I pick
12 up my cell phone to make a call, why does a call go through?

13 A. Yes. So our phones are constantly connected to the
14 network and taking signal strength and quality measurements.
15 The reason they're doing that is to be able to identify all the
16 towers and all the sides of the tower your device can see at a
17 particular moment. And so signal strength and quality
18 measurements that allow your device to make a hierarchy list of
19 the best serving cell site. So that exact moment you want to
20 place an outgoing call to your home or office, your phone is
21 making that decision based upon the tower and side of the tower
22 it has as number one on that list, which is going to be that
23 best signal.

24 Q. And what determines which cell phone tower you use?

25 A. Yep. So it's going to be that signal strength and

1 quality that determines that best serving cell site, and that's
2 typically going to be the tower that you're closest too.

3 Q. Is it always the closest tower?

4 A. Not always, but most often it will be.

5 Q. Okay. When you make a call, what records does the
6 cell phone company keep?

7 A. Yep. So at a minimum it's going to be the date and
8 time that activity occurred, what we consider the originating
9 number, so who initiated the call, who received the call, so the
10 terminating number. That's typically going to contain the
11 duration of that call, and then it's also going to have what's
12 known as a cell site I've talked about, which is another term
13 for that is cell tower, and that's also going to tell us the
14 sector which is known as the side of that tower.

15 So again, by doing that correlation from that call
16 detail record we know the tower that's utilized, we correlate to
17 the master tower list, we know exactly where that tower is
18 located, we know the side of the tower that's being utilized,
19 and then we see the degree orientation of that side of the
20 tower.

21 Q. And why do the cell phone companies keep these
22 records?

23 A. Yes. So going back, you know, 10, 15 years, I'm sure
24 many of you when you had your first cell phone it was for
25 billing purposes. So you had data caps, number of texts you

1 could send, number of minutes you could talk. Now, obviously,
2 we're more in the unlimited plans for most of the carriers. So
3 being back 10, 15 years it was for billing, to know how much
4 usage there was of the device. Now it's more for engineering
5 purposes.

6 So, same example of you making that outgoing call to
7 office or home. If you're five seconds into that call, that
8 call drops, you call up your carrier and let them know that
9 occurred, they're going to want to know the tower and which side
10 of the tower you were -- phone was utilizing in order to
11 troubleshoot that on the network.

12 Q. Were you asked to conduct analysis in this case?

13 A. I was, yes.

14 Q. What specifically were you asked to do?

15 A. So I was asked to look at several phone numbers
16 related to a number of package deliveries that occurred between
17 2018 and 2019. So several dates during that timeframe.

18 Q. And did you complete a report of your review?

19 A. I did, yes.

20 Q. I'd like to put up on the screen what's been marked as
21 Government's Exhibit 130. Is this the first page of your
22 report?

23 A. It is, yes.

24 Q. Okay. We can skip ahead to page 2. Maybe just move
25 to page 3.

1 what are we looking at here?

2 A. Yes. So this just gives you an idea of what cell
3 towers look like. So whether or not you realized it, cell
4 towers are around us everywhere. They're what allows our phones
5 to truly be mobile.

6 Is it all right if I mark the screen?

7 Q. Sure.

8 A. So on the top left here, what I just drew a line
9 through, that's what you have -- consider a traditional cell
10 site. It's that large metal pole structure that has these
11 things that look like speakers on the side of it that I just
12 circled, the gray in color. Those are actually the antennas
13 that are pushing out the radio waves away from the cell site and
14 allowing for that two-way communication between your cell phone
15 and the tower. So this large metal pole structure is typically
16 what you're going to see driving along the interstate, the
17 Baltimore-Washington Parkway for instance, 695, or 83 if you're
18 going through the city.

19 If you're in the city, in a city environment like
20 Baltimore, you're typically going to have what we have here in
21 the top middle, that I just drew a bracket around, and it's
22 actually the antennas are mounted on the top of the building;
23 whether it's an office building or apartment building. You can
24 even see they're painted to match the color scheme of the
25 building to just be less noticeable to people passing by on the

1 street.

2 And in the city, we also have a lot of what we call
3 pole toppers that we have here on the top right. They're meant
4 to provide very tight, localized coverage to a very densely
5 populated area.

6 Some other examples here on the bottom row, they can
7 be encased in brick on the side of an apartment building, in a
8 flag pole. For those of you familiar with Montgomery County,
9 the intercounty connector, they have an artificial tree that
10 sticks out about 30 feet higher than everything else, that's
11 very noticeable, that's a cell site. And they can even be in a
12 silo like you have here. So anywhere you can mount an antenna
13 and run power to can serve us as a cell site. If you've been to
14 an Orioles game, on top of the Warehouse at Camden Yards has
15 several cell sites.

16 Q. Let's skip forward to page 4. And tell us a little
17 bit about sectors and orientations, please.

18 A. So on the previous slide we just saw every cell tower
19 can look different from one another. However, a standard cell
20 sight is going to be intended to provide a full circle of
21 coverage around it. So a circle is 360 degrees. Now, I
22 mentioned earlier sector and side of the tower. Well, that
23 tells us that the degree orientation that that side of the tower
24 is being utilized is oriented. So if we have that full circle,
25 360 degrees, the typical site is going to be broken up in three

1 equal sides. So if we take 360 degrees, divide that by three,
2 each side is going to be 120 degrees.

3 Now the cell phone carrier can't tell that signal to
4 stop at that exact 120 degree point, so there can be some
5 overlap among adjoining sectors, it could be slightly wider than
6 120, it could be slightly narrower than that design of 120
7 degrees.

8 Think of it if you and your significant other are
9 having a friend over for dinner and there's three of you and
10 you're cutting a pie freehand for dessert. One slice is going
11 to be a little wider than the other, one slice a little
12 narrower, but if you put that all together it still gives you
13 that full circle, that full pie.

14 Obviously, a cell tower isn't a dessert but it's the
15 same concept. Side one of the tower could be slightly wider
16 than 120, it could be slightly narrower than that 120, but as a
17 whole, all the sides will give you that full coverage around it.

18 Q. Move forward to page 5 of Government's Exhibit 130.
19 Explain to us what we're looking at here.

20 A. So when we display the activity on the map, we use
21 what we call a sector wedge. So we have the arms and then we
22 have the wedge. All this is there to denote is the radio
23 frequency as it's leaving that cell site.

24 So you see here, the arrow coming out from the middle
25 of the tower, you see it's pointed at zero degrees. So in the

1 master tower list this side is identified as zero degrees. To
2 illustrate that design of 120, we go 60 degrees left, or
3 counterclockwise, and 60 degrees to the right, or clockwise, to
4 again represent that design of 120 degrees, understanding in
5 practicality that it can be slightly narrower than that 120 or
6 slightly wider than that 120. So this wedge and arm is only
7 there again to denote the radio waves as it's leaving the cell
8 site. It does not mean that that device is inside of that wedge
9 or inside of these arms.

10 Q. Let's move forward to page 6 of Government's Exhibit
11 130. Now, we see an illustration here. Clear that screen.

12 Tell us how -- tell us what you've done now on this
13 screen.

14 A. So we use Google Maps as our underlay to again
15 illustrate the general geographic area the device is when a
16 particular activity occurs. So again, we have the same tower
17 and sector identified here, oriented true north at zero degrees.
18 So we see that activity occurring on this tower and sector. And
19 then we look at the adjoining towers like we have up here that
20 allows us to form our opinion as to the coverage of the tower
21 that is being utilized at a particular time.

22 Q. All right. So I'd like to now turn to page 7 of
23 Government's Exhibit 130. Were you asked to do a specific
24 analysis on May 7th -- well, May 7th, 2018, at 7:26 a.m.?

25 A. Yes, as it relates to a FedEx delivery.

1 Q. And can you tell us the phone number that you were
2 reviewing?

3 A. Yep. It's (754) 209-9560, which was served by Sprint.

4 Q. Okay. If we can put up on the screen -- and what is
5 the address that we're looking at?

6 A. Yep. 2645 Acapulco Drive in Miramar, Florida. So as
7 we go through these subsequent slides, you'll see them blown out
8 in the time periods I was asked to analyze. So each date is
9 going to be separated by a cover sheet like you see here.

10 Q. All right. Let's start -- let's put up on the screen
11 Government's Exhibit 138 and move -- thank you -- and move to
12 page 2. Thank you. And looking down at account 9, do we see
13 that same phone number there ending in 9560?

14 A. Yes.

15 Q. And can you read the username for us?

16 A. Yeah. I might be pronouncing it incorrectly, but
17 Eghosasere Avboraye.

18 Q. Thank you. We can take down Government's Exhibit 138.
19 And can we put up what's been previously admitted as
20 Government's Exhibit 56? And if you're able to, are you able to
21 read -- or do you want me to -- there we go. Thank you,
22 Mr. Kerrigan.

23 what is the recipient address here?

24 A. The recipient address is 2645 Acapulco Drive, that's
25 listed as Hollywood, Florida.

1 Q. And the date? The date of delivery I'm sorry.

2 A. 5/7/2018 at 7:26.

3 Q. Okay. All right. Now, let's go back to Government's
4 Exhibit 130, and turn to page 8. All right. Tell us what we're
5 looking at here.

6 A. Yes. This is sort of the lay of the land for the
7 Sprint cell network down in Miramar, Florida area. You can see
8 where Miami is toward the bottom of the screen where I just
9 underlined.

10 So each of these black dots represented here is a
11 Sprint cell site in Sprint's network. So it's either one of
12 those large metal pole structures on the side of the building, a
13 flag pole, an artificial tree. That's what each one of these
14 black dots represents.

15 And then we have the location of interest, which is
16 the red pin here in the center of your map which I just circled,
17 that represents 2645 Acapulco Drive in Miramar, and that's where
18 the FedEx delivery occurred on May 7 of 2018 at 7:26 a.m.

19 Q. And if we can move forward to page 9. What is
20 reflected in this map?

21 A. Yep. So it reflects really the first page of my
22 analysis as it relates to the activity of phone number
23 (754) 209-9560. So we're seeing the activity here for about a
24 seven-and-a-half-hour time period.

25 So to kind of orient yourself, each slide in the top

1 right is going to have the number that the records reflect,
2 shown here. And then the bottom left is going to be a time
3 period for which those records are included in. So you see
4 here, we're looking at a seven and a half time period from
5 midnight to just prior to 7:30 a.m. We're seeing activity of
6 two cell sites at that time oriented to the right of your
7 screen.

8 So we're seeing, particularly here, cell site 7737,
9 which is right here, being utilized between 12 a.m. and 7:29
10 a.m. So one thing we always look at for our analysis is the
11 context of the records. So you see between 12 a.m. and 7:25
12 a.m. the device is always using side two of the tower. That's
13 denoted by the 2 here in the sector wedge. So it's using the
14 side of this tower that's oriented in a southeastern direction.

15 After that, 7:27, we see a series of three outgoing
16 calls that are placed now on the tower that's slightly further
17 southeast from the one that was being utilized just prior to
18 this time.

19 And then after that, 7:29 a.m., we see side one of
20 this tower now being utilized. So between this 7:25 and 7:29
21 a.m. this is activity that's indicative of the device starting
22 to move away from the area that it was prior to that time.

23 Q. Now let's move forward to page 10. What do we see
24 here?

25 A. So we're picking up with the record that we just left

1 off on the previous slide at 7:29 a.m. So that's side one of
2 this tower oriented toward the north. And we're seeing
3 subsequent activity which is outgoing calls, incoming calls,
4 moving into the direction of our Acapulco Drive address.

5 So I should have mentioned when you see an OC that
6 denotes outgoing call, when you see an IC that denotes an
7 incoming call, and the number reflected is who that device is in
8 contact with.

9 Q. And so we see movement on various different cell
10 towers; is that right?

11 A. Correct. So between 7:29, as you see here -- just
12 underlined again -- and 7:35 a.m., this is all activity that's
13 consistent with the device moving toward the area of Acapulco
14 Drive. Again, that red pin.

15 Q. And let's move forward to the next page. What do we
16 see here between 7:35 and 7:56 a.m. on May 7th, 2018?

17 A. Yep. So about a 21-minute time period here. We're
18 seeing the activity of two towers that's consistent with the
19 area of 2645 Acapulco Drive in Miramar. Again, that red pin.

20 Q. Okay. And what, if anything, can you learn from two
21 cell towers on two different sectors of one cell tower being hit
22 at a similar time period?

23 A. Yes. So when we see side two of the tower being
24 utilized, again, that's where we left off on the previous slide,
25 and then 7:36:54 we're seeing side three of the tower. The

1 device likely moved from that side of the tower to the other
2 side of the tower as it's now using a different side of it.

3 Q. Okay. Let's move forward to the next page of
4 Government's Exhibit 130. And what specific analysis is being
5 done here?

6 A. So now we're looking at a different date. This is
7 July 7th of 2018, related to a FedEx delivery that occurred on
8 that day at 8:19 a.m. to an address in Sunrise, Florida 10580
9 Northwest 29th Manor. And we're looking at the phone number
10 (754) 209-9560.

11 Q. And that's the same phone number we were just looking
12 at?

13 A. Correct.

14 Q. Okay. Regarding this address, I'd like to put up
15 what's been admitted as Government's Exhibit 45. Can you read
16 for us the recipient address here?

17 A. 10580 Northwest 29th Manor. It's identified as Fort
18 Lauderdale, Florida.

19 Q. And the delivery timestamp?

20 A. 7/7/2018 at 8:19.

21 Q. Okay. Let's go to back to Government's Exhibit 130,
22 page 13, okay. And what do we observe here?

23 A. So again, it's a layout of the Sprint Network in the
24 Fort Lauderdale area of Florida. We're seeing the red pin,
25 which I'm circling, that represents the 10580 Northwest 29th

1 Manor address. And again, every black dot you see is a Sprint
2 cell site in that area.

3 Q. Okay. And move forward to the next page. What do we
4 observe here on this page?

5 A. So we're looking at the activity just after 8 a.m. on
6 July 7th of 2018. So 8:18 a.m. through just prior to 9 a.m. at
7 8:51 a.m. We're seeing the activity begin to the tower I'm
8 going to circle here at 8:18, 8:18:55, oriented in a
9 southeastwardly direction.

10 And then between 8:29 and 8:51 a.m. we see the cell
11 tower being utilized here, in the general area of our red pin.
12 Again, that 10580 Northwest Manor address in Sunrise, Florida.

13 So between 8:18 --

14 Q. I apologize.

15 A. -- the device had moved from this area oriented
16 southeasterly, and then moved west toward the area of our red
17 pin.

18 Q. So at 8:18 the device was hitting off that cell tower,
19 correct?

20 A. Correct. The device would be on the southeastern side
21 of this tower.

22 Q. And the delivery is what time?

23 A. 8:19 a.m.

24 Q. And then ten minutes later the device is hitting on
25 this side of that cell tower?

1 A. Correct. That's the first activity on that tower,
2 8:29:26 a.m.

3 Q. Okay. Let's move forward to page 15. What analysis
4 is being performed here?

5 A. So now we're looking at delivery that occurred in
6 Maryland on January 12th of 2019, at 9:54 a.m. at 314 Southway.
7 And you see here now we're looking at three specific telephone
8 numbers. So (786) 213-5821 belonging to Sprint. This number
9 ending 7610 T-Mobile, and the number ending in 0771 belonging to
10 T-Mobile.

11 The colors you see denoted here are just meant to be a
12 color denotation as we move forward through these next few
13 slides. So when you see black, for instance, that refers to the
14 phone number 5821. When you see blue, 7610, and so forth.

15 Q. Let's put up Government's Exhibit 138, again page 1.
16 Right here, do you see the phone number in green?

17 A. Yes, (754) 304-0771.

18 Q. What's the user name?

19 A. David Green.

20 Q. Okay. And looking at page 3 of this exhibit, under
21 account 16, what's the user name associated with phone number
22 (202) 807-7610 in blue?

23 A. Medard Ulysse.

24 Q. Okay. Now I'd like to put up Government's Exhibit 80
25 which has been previously admitted as Government's Exhibit 80.

1 And you see this contact? What's the title of this contact?

2 A. Ghost. And then I believe it's an emoji.

3 Q. And the phone number here?

4 A. (786) 213-5821.

5 Q. Thank you. Now, if we can go back to -- actually,
6 let's pull up Government's Exhibit V7, please. Can you read
7 recipient address for us on page 1?

8 A. 314 Southway residence, Baltimore Maryland.

9 Q. And if we can move forward to page 3. Do we see an
10 expected arrival?

11 A. Yes. Saturday, January 12th.

12 Q. And if we can put up Government's Exhibit 140. And
13 blow up here the one -- the Southway entry. Thank you,
14 Mr. Kerrigan.

15 Can we read the delivery date and time under 314
16 Southway?

17 A. Yes. That's January 12th of 2019, at 9:54.

18 Q. Thank you. We can go back to Government's Exhibit
19 130. All right. And page 16 now. Thank you, Mr. Kerrigan.

20 All right. Again, what are we looking at?

21 A. Yeah. So lay of the land now, here we're looking at
22 the Baltimore, Maryland area. We see every black dot again
23 representing a Sprint cell site. And we see that 314 Southway
24 location denoted by this red pin here that you see in the middle
25 of your screen that I just circled.

1 Q. Now let's move forward to page 17. These are now the
2 T-Mobile cell towers?

3 A. Correct. Yeah. So a T-Mobile phone at this time
4 would only you use T-Mobile towers. So now all these green dots
5 you see represent a T-Mobile cell site in the Baltimore,
6 Maryland area.

7 Q. All right. Let's move forward to page 18. Can we
8 move forward to the next page, please, Mr. Kerrigan. Thank you
9 so much.

10 All right. A lot of activity going on here. What --
11 tell us what we're looking at.

12 A. Yes. So just kind of orient yourself. Again, we're
13 still looking at the Baltimore, Maryland area. We have our red
14 pin that I'll draw an arrow to right here. Again, that
15 represents 314 Southway. That delivery occurred on January 12,
16 2019, at 9:54 a.m.

17 So we're seeing activity here of all three of these
18 phone numbers that we just mentioned; 0771, 5821, and 7610.
19 Again, all denoted in their colors, green, black, and blue.
20 We're seeing all three of these phones during this 11-minute
21 time period in contact with one another, and we see where the
22 5821 number and the 7610 number are in relation to our red pin.

23 Q. And that is so the -- so the blue number is here?

24 A. Correct.

25 Q. It's hitting off that tower in that direction. The

1 black phone is hitting off this tower in this direction, and the
2 green phone hits off these towers?

3 A. Correct. Yeah. So the green phone in particular we
4 see 9:28:01, it's using side two of this tower. 9:30:32 it's
5 using side one. And then 9:31:46 it's using that tower that's
6 slightly further north. So again, indicative of the device
7 moving in a northbound direction during that tight time period.

8 Q. Thank you. And this red dot represents what again?

9 A. That's 314 Southway.

10 Q. And the date of the actual delivery is what?

11 A. January 12th of 2019.

12 Q. At what time?

13 A. 9:54 a.m.

14 Q. So all the calls we're looking at here are all prior
15 to 9:54 a.m., correct?

16 A. Correct.

17 Q. All right. Let's move forward to page 19. And as we
18 do, have you reviewed -- Lyft account records for the account in
19 the name of Medard Ulysse found in Government's Exhibit 138 I
20 believe?

21 A. Yes, I did.

22 Q. Okay. And how is this overlaid on the map?

23 A. So you kind of see where it falls underneath our red
24 pin. So at 9:42 a.m. there was a Lyft denoted drop-off location
25 where you see the Lyft logo that's right underneath the red pin.

1 Q. It's actually so close to the red pin that it actually
2 covers part of it?

3 A. It covers about, yeah, about three-quarters of it.

4 Q. Okay. And what else do we see with regard to phone
5 calls?

6 A. Yes. So we're looking at the two numbers, 0771 and
7 5821, in contact with one another at the 9:36 a.m. time. And
8 you see with the towers that are being utilized by those devices
9 and where those are in relation to one another and in relation
10 to the red pin when that activity occurs.

11 Q. So the green phone hits off this tower, the black
12 phone at 9:36 hits off this tower, and then a Lyft account
13 drop-off at 9:42 is right at that location?

14 A. Correct. Yes.

15 Q. Okay. And now let's move forward to the next page.
16 What are we looking at here?

17 A. Yes. So we're zoomed in now in that area right around
18 314 Southway, and we're seeing the same activity. So the same
19 device, 0771, the same number 5821, and that same drop-off
20 location represented by the Lyft logo here right underneath our
21 red pin.

22 Q. And we've now zoomed in the map closer; is that right?

23 A. Correct. And now we're looking at a slightly later
24 time period, 10:09 a.m., where we're seeing the contact again
25 between those two devices, those two numbers.

1 Q. Explain to us very specifically. We've got an
2 outgoing call and ingoing call here?

3 A. Correct, yes.

4 Q. Okay. And are they actually calling each other?

5 A. Yes. So the black phone, 5821, is placing an outgoing
6 call to the green number ending in 0771, which you're seeing
7 denoted by the incoming call for the green number.

8 Q. Okay. Let's move forward to the next page. And
9 specifically what FedEx delivery are we reviewing here?

10 A. So one that occurred on January 18th of 2019 at 7:04
11 a.m. at 3016 Kenyon Avenue in Baltimore.

12 Q. Thank you. And if we can go --

13 MR. DELANEY: Court's indulgence one moment.

14 BY MR. DELANEY:

15 Q. Can we just put up Government's Exhibit 80, just
16 because I forgot. Does that appear to be the same phone number
17 in Government's Exhibit 80 that you analyzed in Government 10,
18 page 21?

19 A. Yes.

20 Q. Thank you. And if we can put up Government's Exhibit
21 V16. Thank you very much, Mr. Kerrigan. And we're looking at
22 page -- thank you, Mr. Kerrigan.

23 Does the -- does the address of the recipient match
24 the address that you analyzed?

25 A. Yes.

1 Q. And again, the date of delivery? Date and time?

2 A. Yes. January 18, 2019, at 7:04.

3 Q. All right. Let's move forward to the next page of
4 Government's Exhibit 130. Thank you very much.

5 In addition to Sprint cell towers here, there's now a
6 -- well, there is a red dot denoting a drop-off location, is
7 that right, and time?

8 A. FedEx delivery location, yes.

9 Q. Thank you very much. And there's a blue dot here.
10 What is the blue dot?

11 A. Represents a Motel 6 at 1401 Bloomfield Avenue. That
12 was advised was of relevance to this time period.

13 Q. All right. Let's put up on the screen what has been
14 marked as of Government's Exhibit 137 and move to page 36.

15 All right. Guest folio. I'll read it for you. Does
16 the guest appear to be Eghosasere Avboraye-Igbinedion?

17 A. Yes.

18 Q. And the check-in date?

19 A. January 17th of 2019.

20 Q. And the check-out date?

21 A. January 20th of 2019.

22 Q. And does the address marked on Government's Exhibit
23 137 match the address that you've labeled on the Google map in
24 Government's Exhibit 130?

25 A. Yes.

1 Q. All right. Let's go back to Government's Exhibit 130
2 again. And if we can move now to page 23. Okay. What are we
3 looking at here?

4 A. So just after the 7 a.m. hour, 7:16 to 7:21 a.m.,
5 we're seeing activity at device ending in 5821. So 7:16 a.m.
6 you see an outgoing placed to that 0771 number. And you see the
7 tower and sector where it was utilizing to facilitate that call,
8 and where that is in relation to our red pin. Again, where that
9 delivery occurred, 3016 Kenyon Avenue.

10 After that, the next activity we have is at 7:20 a.m.
11 and 7:21 a.m. And you see it's utilizing this cell site here
12 that I have reflected as a circle. This is the first time we're
13 seeing a cell site reflected as a circle as opposed to that
14 sector and wedge.

15 The reason this is reflected as a circle, is it's
16 actually one of those pole toppers I showed you on that slide 3.
17 It's meant to provide very tight, localized coverage to the area
18 around it. So in some instances these will not actually be
19 sectorized, then in themselves will provide a full circle of
20 coverage around it. So that's why it's reflected as a circle.
21 The device can be on any side of that pole topper.

22 Q. And, generally, what can you conclude about the
23 proximity of the device to that circled cell tower?

24 A. Yeah, it's going to be within several blocks of that,
25 because it's meant to provide very tight, localized coverage to

1 a densely populated area around it.

2 Q. Okay. So we see the cell tower hit in this direction
3 at 7:16, which is about 12 minutes after the FedEx delivery,
4 correct?

5 A. Yes.

6 Q. And then the phone is generally in that vicinity
7 within a few blocks is your opinion?

8 A. Yes. So it's moving in a southward direction between
9 7:16 and 7:20 a.m.

10 Q. And let's moved forward now to the next page. And now
11 we've traveled south on your map; is that right?

12 A. Yep. Yep. So before we were looking further up north
13 where I drew the arrow, and then now we see between 7:41 and
14 8:27 the device is using the tower that's close to our Motel 6
15 at 1401 Bloomfield Avenue. You see two sides of that tower
16 being utilized, but again, looking at it in context, the only
17 time we see side one being utilized is at 7:41 a.m.

18 Subsequently, between 8:25, 8:27, all that activity is oriented
19 mostly southern, slightly east, oriented toward our blue pin.

20 Q. And specifically, the phone number in several outgoing
21 and incoming calls is the phone number ending in 0771 that we
22 previously looked at in green?

23 A. That's correct, yes.

24 Q. Okay. Let's move forward now finally to page 25.
25 what's the FedEx delivery we're looking at here?

1 A. So this is on January 19th of 2019 at 9:52 a.m., at
2 716 Melville Avenue in Baltimore.

3 Q. If we could put on Government's Exhibit V11. Who is
4 the sender of this package?

5 A. Charles Butler Carper.

6 Q. And the recipient address?

7 A. 716 Melville Avenue in Baltimore.

8 Q. And timestamp of delivery?

9 A. January 19th of 2019, at 9:52.

10 Q. Okay. Let's move forward now to page 26 of
11 Government's Exhibit 130. Again, thank, you Mr. Kerrigan.

12 And again, we're looking at Sprint cell towers; is
13 that right?

14 A. Correct, yeah, in the Baltimore area. So we have the
15 same blue pin on 1401 Bloomfield Avenue again representing Motel
16 6, and the red pin represents that delivery a 761 Mellville
17 Avenue on January 19th of 2019.

18 Q. Let's move forward to the next page. What do we
19 observe here?

20 A. Activity just prior to 7 a.m., so at 6:53 we see two
21 outgoing call this number places; one to the 0771 number, and we
22 see that southern side of the tower, oriented to the Motel 6,
23 being utilized to facilitate that activity.

24 Q. Okay. So the phone is hitting off this tower in the
25 direction of the Motel 6?

1 A. That's correct.

2 Q. And move forward to the next slide. Thank you,
3 Mr. Kerrigan.

4 we've moved northward in Baltimore now, right?

5 A. Correct. Yes.

6 Q. Okay. And what are we observing here?

7 A. So we're seeing activity in about an hour and a half
8 time period, 8:31 to 10 a.m., again on January 19th of 2019. We
9 see the one cell tower 610, that I'm drawing an arrow toward
10 here, being utilized during this time period between 8:31 and 10
11 a.m., and we see several calls placed to the 0771 number. And
12 then additionally at 9:41:35 we're seeing calls to the 0771
13 number as well at 9:41:35.

14 Q. Okay. And we can move forward to the next slide.
15 What do we observe here?

16 A. So the activity right after that 10 a.m. activity, the
17 next map is at 10:29 a.m. And we see the cell tower being
18 utilized to receive a call from the 0771 number.

19 Q. And that's about 10:29 a.m.?

20 A. That's correct.

21 Q. And then let's move forward to the final slide, page
22 30. And which cell tower is this phone now hitting off while
23 it's doing an outgoing call to the number in green?

24 A. Yep. So that was the same tower we started with just
25 prior to that 7 a.m. oriented toward our Motel 6.

1 MR. DELANEY: Court's indulgence.

2 No further questions at this time, Your Honor.

3 THE COURT: Mr. Delaney, just if I can. This
4 testimony is related to 761 Melville Avenue, 3016 Kenyon Avenue,
5 and 314 Southway is the last three locations that he -- about
6 which he's testified, correct?

7 MR. DELANEY: I'll confirm that for you. I believe
8 that to be correct.

9 THE COURT: Was there anything as to Chesmont Avenue?

10 MR. DELANEY: No, Your Honor.

11 THE COURT: There was not.

12 MR. DELANEY: There was not -- there was not any
13 evidence presented as to -- well, there's not any cell tower --

14 THE COURT: No, I'm just talking cell tower analysis.
15 Just for purposes so the jury understands, there's specific
16 addresses referenced in the count, and I'm just trying to
17 clarify that. So we heard testimony with respect to three
18 specific locations, correct?

19 MR. DELANEY: That is correct, Your Honor. And we
20 will present other evidence at the end of that.

21 THE COURT: I understand. I'm just asking, maybe I
22 missed something. Thank you very much.

23 And Mr. Guillaume, cross-examination, sir.

24 MR. GUILLAUME: Yes, Your Honor. Thank you.

25 THE COURT: Do you want a bit of a break for a minute

1 here or not?

2 MR. GUILLAUME: I think the jury could probably use a
3 break, yes.

4 THE COURT: Okay. Good. We'll take a break,
5 ten-minute break, and we're starting at 20 of 12, and then we'll
6 probably stop around ten or five minutes of one.

7 On Wednesday's the judges all have a meeting for
8 lunch. And if you think you try to get lawyers to stop talking,
9 try to put a bunch of judges in a room and you can imagine. So
10 we'll stop around ten minutes of one or five minutes of one for
11 lunch.

12 we'll take a ten-minute break.

13 THE CLERK: All rise. This court stands in recess.

14 (Recess was taken at 11:27 a.m.)

15 THE COURT: Counsel, the witness should step off the
16 witness stand I gather.

17 Agent Fowler, if you'll step out in the hallway for a
18 minute here.

19 THE WITNESS: Sure, sir.

20 THE COURT: Yes, Mr. Guillaume.

21 MR. GUILLAUME: On the break I had a chance to talk
22 with some of -- my investigator who is trying to -- I guess my
23 question is this before I even say that. Coordinating the
24 deposition -- Ms. -- who he informed me that the witness I
25 requested is available at four p.m. today for a deposition.

1 THE COURT: I beg your pardon?

2 MR. GUILLAUME: The witness that I requested earlier,
3 Ms. Jones.

4 THE COURT: Kamisha Jones.

5 MR. GUILLAUME: She's available for a deposition at 4
6 p.m.

7 THE COURT: And you all can hook it up just like
8 you've done before and video the whole thing?

9 MR. GUILLAUME: That's the question. It's more of a
10 question than anything, Your Honor.

11 THE COURT: Sure.

12 MR. GUILLAUME: Are we able to do that? And with
13 respect to a court reporter, does the courtroom court reporter
14 serve as the court reporter? She's actually in Florida.

15 THE COURT: Right. Well, I'll try to coordinate that.
16 As far as I'm concerned, we can -- we can recess and it's up to
17 how the clerk's office wants to handle this. Ms. McPherson is
18 here as the court reporter, is here until five o'clock and I --
19 I would think that we should be able to deal with this in some
20 way and video it. I don't know what the mechanics would be, but
21 we should be able to do it.

22 MS. GOO: Well, Your Honor, if I may briefly. After
23 having done a number of these, the only thing I would just
24 caution on is the actual ability to videotape the deposition
25 itself. We had a number of technical issues, but the long and

1 short of it is, we'll have to work out those details because
2 it's not as simple as just hitting record given some of the
3 limitations.

4 THE COURT: well, let's throw that thought out. We
5 very easily, very easily should be able -- we certainly could do
6 this by audio very easily, could we not, Mr. Gurevich? We have
7 lawyers and witnesses call in all the time.

8 Denis, are you listening to me?

9 THE CLERK: Your Honor, I can have her on the
10 telephone in the courtroom.

11 THE COURT: You cannot?

12 THE CLERK: I can.

13 THE COURT: Yeah. Sure you can. Sure. And what
14 would be the difficulty in -- I don't really -- in terms of how
15 we swear the witness, if we're satisfied that we, in fact, have
16 Kamisha Jones and everyone is satisfied that's who is on the
17 line, we could swear her by means of on the telephone, and
18 examination could be conducted on audio with a jury here. And
19 then Mr. Guillaume -- or Mr. Guillaume, if you call her, you
20 could conduct your examination, the government could
21 cross-examine, and she could be made available in that fashion.
22 We could take it out of turn. Could we not do that?

23 MR. GUILLAUME: I think that's a possibility.
24 However, there were a couple of exhibits that I think maybe get
25 around, I wanted to show her. But I can probably get around

1 that depending -- I can restructure some questions.

2 THE COURT: Okay. And you can still introduce the
3 exhibits. You could ask her about those exhibits, you could
4 still introduce those.

5 MR. GUILLAUME: Sure. Because I never spoken to her
6 before, so -- I'm sure the government knows what she sounds like
7 and maybe even looks like.

8 THE COURT: Well, seems to me that unless we really
9 break premium of a video of being done of her, and given that
10 the government has familiarity with this witness and, in fact,
11 listed her as a potential government witness, it seems to me
12 that at four o'clock we can take her testimony and we can take
13 it out of turn, Mr. Guillaume, not waiving any rights under Rule
14 29 for any kinds of motions, you could conduct your examination
15 of her and the government could question her in whatever way
16 they wanted. And the exhibits that you would normally show her,
17 that would in ordinarily be admitted and we can deal with it in
18 that fashion. would that be workable to you?

19 MR. GUILLAUME: I think it would, Your Honor. The
20 only hiccup that I see, potentially, is the jury not being able
21 to assess her credibility one way or the other, for both the
22 government and myself. So I don't know if it's for a limited
23 portion of the examination would be allowed to see the witness
24 -- the jury be allowed to see her, potentially. If that's not
25 possible that we have some sort of a stipulation or explanation

1 to the jury as to why this is occurring so they're not confused.
2 That the witness is in Florida, she does not have access to a
3 video monitor, something of that nature.

4 THE COURT: I don't see why we would have any
5 difficulty doing this. Seems to me, to try to do the video
6 aspects is creating unnecessary logistics and dynamics that
7 really -- are really not of any great import. I don't mean that
8 jurors don't size up witnesses, but they'll listen to what she
9 has to say. We've done by video deposition here, we haven't had
10 some people in the courtroom, some of the victims of the fraud.
11 It seems to me that this is the easiest, quickest way to deal
12 with this and respond quickly to your request this morning.

13 MR. GUILLAUME: Thank you, Your Honor. May I have a
14 brief indulgence?

15 Your Honor, we're working through it. I think we have
16 it figured out. I think we're going to have the witness send us
17 -- or the government will provide to me a picture of herself
18 that we'll be able to show the jury as an exhibit of who this
19 person actually is.

20 THE COURT: The government has a photograph of her; is
21 that right?

22 MR. DELANEY: We can go back and look at our files,
23 and if we do, we will certainly provide it.

24 THE COURT: That's fine.

25 MR. GUILLAUME: I think that'll work, Your Honor.

1 THE COURT: I -- it just seems to me that that's the
2 safest and most assured way of having you be able to present
3 that testimony that you request, and I'm more than willing to
4 work with you on it.

5 MR. GUILLAUME: And, Your Honor, one other thing, I
6 think. So the government -- is on pace based on the number of
7 witnesses there are and the length of my anticipated cross. We
8 probably will finish in advance of 4 p.m.

9 THE COURT: We'll have to wait and see. That's fine.
10 With that, let's bring the jury in. Thank you.

11 (Jury entered the courtroom at 11:54 a.m.)

12 THE COURT: Thank you all, ladies and gentlemen.
13 Sorry to keep you waiting again. We had another evidentiary
14 issue we dealt with in the interim. Sometimes we stay out here
15 sometimes when you're taking a break. Had to talk do with a
16 very likely a witness at four o'clock today which -- as to whom
17 cannot be here. And I'll explain later, but we may wind up
18 doing it by audio, and you'll hear the witness and will expedite
19 some matters as well. So with that, we're ready to continue --
20 we'll get Special Agent Fowler back on the witness stand.

21 Agent Fowler, thank you very much.

22 You may proceed, Mr. Guillaume.

23 MR. GUILLAUME: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. GUILLAUME:

1 Q. Good morning, sir.

2 A. Good morning, sir.

3 Q. I just have a few questions for you. Sir, just to be
4 clear, you work for the FBI; is that right?

5 A. Yes, I do.

6 Q. But your specialty is in the -- at least in this case,
7 was the analysis of certain phone location or phone -- I don't
8 want -- historical cell site information; is that correct?

9 A. Correct.

10 Q. Amongst other things related to that; is that right?

11 A. Yeah. Several sets of phones as we discussed and then
12 also those Lyft records.

13 Q. Right. You didn't participate in any underlying
14 investigation of the case, right?

15 A. I did not, no.

16 Q. So just to be clear, you were provided information for
17 which you were asked to give an expert opinion on; is that
18 correct?

19 A. Correct. That being the cell phone records.

20 Q. Yes. Now, with those records, and I've asked you
21 before and I want to ask you a couple other things. You
22 mentioned that you had some training previously, previous
23 training with request -- with respect to encryption -- I don't
24 want to use the wrong term, I'm not a very technical person.
25 Encryption information, or the ability for phones to be

1 encrypted. Can you explain that? I'm sorry.

2 A. So initially when I entered onto the duty with the
3 FBI, I was an intelligence analyst assigned to the cyber
4 division. And one of my roles was looking at encryption issues
5 across the spectrum of mobile devices, video gaming systems,
6 other things like that. So more encryptic communications, that
7 was my focus as an intelligence analyst. And then in March of
8 2016 I converted to a special agent position so I no longer did
9 that work.

10 Q. So you had familiarity with the encryption capability
11 of mobile devices, correct?

12 A. More specifically applications running on those
13 devices.

14 Q. Even better. So you're familiar with the application
15 wickr?

16 A. I've heard of it, yes.

17 Q. Okay. Heard of it or you have you ever worked with
18 it? Do you know anything other than just what you would -- a
19 normal person would hear? Do you have any particular set of
20 expertise with respect to wickr?

21 A. As it relates to that specific application, I'm just
22 aware it is one that exists, that is available to consumers.

23 Q. Are you aware that it is supposed to be an encrypted
24 app, application?

25 A. Yes.

1 Q. Okay. So moving on. With respect to historical cell
2 site data you've given testimony this morning and we've seen
3 pictures of cell phone towers located in -- on different
4 structures and in different locations throughout, in this case
5 Baltimore, and you've talked about how they are generally placed
6 in cities and in states, right?

7 A. Yes.

8 Q. Now, when you are given information to investigate a
9 particular number or set of numbers with respect to a location,
10 you are provided -- forgive me for what may sound like a simple
11 question, just want to be clear. You are provided an actual
12 number, like number 1-2-3-4-5, a phone number, and you have that
13 information. And is it my understanding that you look for it,
14 you look for that phone number in a particular location that has
15 been pointed out to you by whoever is giving you that
16 information?

17 A. So my approach is to always look at the records as a
18 whole. So say there's, in this instance, a relevant delivery
19 that occurred at 9 a.m. on a particular date. I'm going to look
20 at that activity that's all ongoing during that device, during
21 the relevant time period around that, so typically an hour or
22 two prior, an hour or two after. And my opinion is on the
23 actual activity of that device and where it relates to the
24 pertinent locations so...

25 Q. Sorry. Were you finished?

1 A. Yeah. I was just going to say to my analysis is a
2 reflection of that entire time period. Say I'm looking at 9
3 a.m. to 1 p.m., all the records during that time period are
4 going to be shown unless I denote otherwise in my report.

5 Q. But you're looking at that specific number and its
6 movements, or lack thereof, in that timeframe; is that correct?

7 A. Correct. So when we get the records from the cell
8 phone providers, in this case Sprint as well as T-Mobile,
9 they're specific to a particular phone number. So that's why,
10 again, those color-coding on some of those slides, that denotes
11 the different phones.

12 Q. So when you go to a -- forgive me for my lack of
13 technical terms, but when you take the raw data from a cell
14 tower, I'm assuming -- and correct me if I'm wrong, that when a
15 cell phone is used and it uses a particular tower; is that
16 right?

17 A. Correct. In this case mainly voice activity; so
18 incoming/outgoing voice calls.

19 Q. So there's a record of that -- that's different from a
20 cell phone record that your provider would send to you, right?

21 A. Well, as far as my analysis it's the same. So when --
22 so say I take out my phone right now, I make an outgoing call
23 too my office. We use AT&T. That call is going to be captured
24 in that call detail record. So there's that user activity part
25 of it, and then on the back end it's stored in that call detail

1 record.

2 Q. So I don't think we get phone bills anymore, but if we
3 got a phone bill like in the old days, you would see that you
4 called me at 12 p.m. on Wednesday in a phone record, correct?

5 A. Correct. So if you're asking about the difference --
6 a bill is entirely different than that call detail record.

7 Q. I'm sort of saying that but I want to make sure I'm
8 clear. So that's one way to determine when one phone calls
9 another phone, from a phone record. Yes?

10 A. Yeah, from the call detail record, which is the basis
11 of my analysis.

12 Q. And another way to determine if the phone was in use
13 is if the tower that it -- that it made to use the call, right?
14 So if Tower 1 -- if I'm calling you and Tower 1 is right here,
15 then my number is going to appear in Tower 1's raw data. Is
16 that how it works?

17 A. Well, that's entirely separate than the call detail
18 records.

19 Q. Right. Exactly my point. So there's basically two
20 ways to determine the same information, right?

21 A. Sort of, yeah. In that case you would have to dump --
22 we call it a tower dump, for lack of a better term. You're
23 taking all of the activity on a particular tower that's being
24 utilized. So you'd be capturing everybody that was using Tower
25 1 during that time period.

1 Q. You've already anticipated my next question. The
2 tower dump, so in that tower dump for the relevant time period,
3 let's say it's for an hour or however long, it's going to have
4 all the activity, correct, of the phones that -- and the numbers
5 of the phones that were using that tower; is that right?

6 A. Correct. If they were utilizing like -- receiving a
7 call or placing a call.

8 Q. Right. So I would -- I don't know, but I would assume
9 that in any given time there are potentially thousands of phones
10 using one particular tower at one time; is that right?

11 A. I wouldn't say it's that many at an exact moment, no.
12 But over a time period, sure it could be, depending how long
13 that time period is.

14 Q. Because most of us, in this country anyway, have cell
15 phones. So I'm assuming whoever is in that area is going to be
16 using that tower; is that right?

17 A. Yeah. So for it to be captured in the tower data, it
18 would mostly have to be an incoming call or an outgoing call
19 being placed. So you're relying upon that actual user activity
20 for that record to be generated on the tower.

21 Q. Right. So when you get that raw data back from that
22 tower dump and you see the hundreds or thousands or however many
23 calls that are there, you're looking for -- in your capacity in
24 this case, you're looking for the specific number or numbers
25 that you've been provided; is that correct?

1 A. No. So in this case we were given the call detail
2 records on the specific numbers. So I'm only seeing the
3 activity of those numbers.

4 Q. Okay. So you didn't go to the tower dump. You didn't
5 do a tower dump in this case, you just went to the records,
6 which we talked about a moment ago, to determine the location,
7 to plot out the information. Or am I getting that wrong?

8 A. Yeah. So there's the call detail record, again,
9 that's the CDR, it's specific to a particular phone number. So
10 say you have telephone number ending in 1234, you get the call
11 detail record for that, you're only seeing activity of cell
12 phone number ending in 1234.

13 If you were to pull the entire tower that was utilized
14 at a particular time, you would see all the numbers that were
15 using that tower during that time period if they were making a
16 call or receiving a call.

17 Q. And this -- I think I know the answer to this
18 question, I just want to confirm, that the tower dumps and the
19 call records that you're looking at, they're not -- you're not
20 able to determine a content of a conversation one way or the
21 other, right? It's not a listening device, right? It's just
22 the actual whether a call was placed on a particular device at a
23 particular time; is that right?

24 A. Correct. I can only say these two numbers were
25 attempting to contact one another.

1 Q. Right. And there's a -- there's also duration times
2 attached to those calls as well. For example, if you talked to
3 someone for two hours or if you talk to someone for five
4 seconds, that's going to be captured in the call detail records;
5 is that right?

6 A. Yes. They'll have duration which is going to be
7 captured in seconds.

8 Q. Is that also captured in the cell tower data, or no?

9 A. It would be, yes.

10 Q. Okay. And one other question or set of questions in
11 case I have a follow-up.

12 If a phone is on but not being used to make a phone
13 call -- see, I have another question, I'm sorry, so forgive me.
14 It's not being used to make a phone call, does that implicate --
15 for right -- as of right now I have -- my phone is on but I'm
16 not using it, does it that implicate any cell tower activity one
17 way or the other?

18 A. So it wouldn't be captured in the call detail record
19 because you're not actively engaging with your device; you're
20 not receiving a call, you're not placing a call. But those
21 signal strength measurements, because this phone is on, are
22 still ongoing and this phone is still making that hierarchy
23 list. So if at this exact moment you want to pick up and call
24 your office, your phone would, again, automatically use that
25 number one on the list which is that best serving cell site.

1 Q. And this -- so if you were to pull up the cell site,
2 if we go back -- if we go -- fast forward a week from now, pull
3 the cell site for Tower 1, which we assume is right outside the
4 courthouse, and my phone number and I'm not using it, would you
5 be -- but it's on, you'd be able to see -- if I'm understanding
6 what you're saying, you'd be able to see that my phone was on,
7 that it was closest to this tower, but it wasn't being used. Is
8 that accurate?

9 A. No. You have to be actively using it for me to see it
10 in the tower activity. Again, there has to be active user
11 interaction with the device, whether the phone's receiving a
12 call or an outgoing call is being placed.

13 Q. Okay. And my last question is when a device uses -- a
14 mobile device uses an application to make a call, isn't it true
15 that that type of call is not necessarily going to show in a --
16 excuse me, rely on a cellular tower to be completed; is that
17 accurate?

18 A. So it can. If you're in your home, if you're on wifi
19 it could be using wifi. But if you're out around the courthouse
20 not connected to the court wifi, I expect it to use a cell site
21 to facilitate what's call data activity, but that's entirely
22 separate from the voice activity.

23 All the time stamps that we talked about in my direct
24 testimony are all voice activity; so user interaction with the
25 device, whether a call is being received or call is being

1 placed.

2 Q. So if I were to make a call on wifi, to use that
3 example, and this particular example that you've given, that
4 call would not appear on a cell site information -- on a
5 cellular tower, it wouldn't rely on a cellular tower and so it
6 wouldn't be implicated in there in their records; is that right?

7 A. So it depends on the carrier. Some carriers, for
8 instance, will denote a service code for wifi activity, but no
9 cell site will be populated, that would just be blank for it.
10 So the fact that is cell site was generated, like the ones
11 you've seen in my report, that means that device was utilizing
12 that tower and that side of the tower to facilitate that
13 activity. So they were not over wifi.

14 Q. Are there certain -- but if that same -- that same
15 call, in that example you just gave, if that same person decided
16 to then use wifi, that would not necessarily appear in the -- in
17 the cellular data on the tower, right?

18 A. So if it did appear I would see the date and time that
19 it occurred, who was calling who, but then that cell tower
20 information and side of the tower would be blank. There would
21 be nothing there because it didn't use a cell site.

22 Q. What about -- we were talking about wifi, what about
23 applications? Like you said you're not familiar with Wickr, but
24 are you familiar with the application WhatsApp?

25 A. I am, yes.

1 Q. And whatsapp is an application that mobile devices can
2 use; is that right?

3 A. Yes. Unfortunately my homeowner's association uses
4 it.

5 Q. Yes. And those calls -- the calls that are placed on
6 whatsapp, as an example, as an application, just one of many,
7 I'm sure, those calls do not always or ever -- do they ever rely
8 on a cellular tower to be completed?

9 A. So they would rely upon the tower for that data
10 session to be ongoing to facilitate that activity, but I
11 wouldn't be able to see Person A contacting Person B because
12 that's running through the data session, which is entirely
13 separate from that call detail record. It would never show up
14 in the call detail record itself because it's going through
15 data.

16 Q. Even if it actually happened.

17 A. Correct.

18 Q. Thank you.

19 MR. GUILLAUME: I have no further questions.

20 THE COURT: All right. Thank you very much, Mr.
21 Guillaume. Any redirect, Mr. Delaney?

22 REDI RECT EXAMI NATION

23 BY MR. DELANEY:

24 Q. I just want to be clear. The calls that you have
25 testified to in your report, even if those were calls made

1 through an application like whatsapp, would they still be
2 hitting cell phone towers?

3 A. They would not be, no. So in the call detail record,
4 when that record is generated, that tower is identified, that
5 side of the tower is identified, that means that that specific
6 network resource, being the tower and the side of the tower,
7 that is being used to facilitate that call at that time.

8 MR. DELANEY: Court's indulgence one moment.

9 Okay. No further questions.

10 THE COURT: Thank you very much, Mr. Delaney and Mr.
11 Guillaume.

12 Agent Fowler, you may step down. You really shouldn't
13 discuss your testimony with anyone until this trial is concluded
14 and the unlikely event you're called back to the witness stand.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you very much.

17 MR. DELANEY: Your Honor, before the next witness I
18 have one quick statement.

19 THE COURT: Sure. Sure.

20 MR. DELANEY: The individual that we were discussing,
21 testifying at 4 p.m. today is also available at 2 p.m. I've
22 learned.

23 THE COURT: I beg your pardon?

24 MR. DELANEY: She's also available at 2 p.m. so we
25 could do it earlier in the day if the schedule dictates.

1 THE COURT: well, whatever. That's fine. You all can
2 discuss that later.

3 MR. DELANEY: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Delaney.

5 So with that, we are ready now for, I believe, it will
6 be Agent John Mooney of the FBI.

7 MS. GOO: It's Mr. John Mooney with the FBI, yes. The
8 Government next calls to the stand Mr. John Mooney with the FBI.

9 And Your Honor, if I may have one quick moment with
10 counsel.

11 THE COURT: Sure. Sure.

12 Mr. Mooney, please, sir, if you'll come forward here,
13 please, and be sworn.

14 (JOHN MOONEY, duly sworn.)

15 THE CLERK: while speaking clearly into the
16 microphone, will you please state your full name and spell your
17 last name for the record.

18 THE WITNESS: John Mooney. M-o-o-n-e-y.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MS. GOO:

22 Q. Good afternoon, Mr. Mooney.

23 A. Good afternoon.

24 Q. Where are you employed?

25 A. FBI Baltimore field office.

1 Q. what is your title there?

2 A. I'm a staff operations specialist.

3 Q. what does that mean?

4 A. I provide tactical intelligence to the case agents on
5 the squad. So I review multiple data sources to identify
6 relevant information and gaps in our investigations. I provide
7 that intelligence to the case agents for further action or
8 decision-making based on information.

9 Q. Okay. Did there come a point in time in which you
10 became involved in an investigation with Special Agent Jason
11 Bender related to an elder fraud scheme that was occurring in
12 the Baltimore area in 2018-2019?

13 A. Yes.

14 Q. And was one of the targets of that investigation
15 Medard Ulysse?

16 A. Yes.

17 Q. And was another Mr. Eghosasere Avboraye-Igbinedion?

18 A. Yes.

19 Q. And did you -- so you helped out with that
20 investigation; is that fair to say?

21 A. Yes.

22 Q. And as a part of your involvement in the
23 investigation, did you review subpoenaed information related to
24 the case?

25 A. Yes.

1 Q. And again, did you assist Agent Bender with preparing
2 for the trial in this case?

3 A. Yes.

4 Q. I'm going to first turn your attention to Government's
5 Exhibit No. 7. And have you had an opportunity to review
6 Government's Exhibit No. 7?

7 A. Yes.

8 Q. And what is this?

9 A. This is a driver's license photo of Mr. Igbinedion.

10 Q. And how was it obtained?

11 A. We obtained this from the Florida DMV through
12 certified records.

13 Q. Okay. Showing you Government's Exhibit --

14 THE COURT: So Government Exhibit 7 is a photograph --
15 representative photograph of the defendant Mr. Igbinedion.

16 MS. GOO: Yes.

17 THE COURT: Okay. Thank you.

18 BY MS. GOO:

19 Q. Showing you Government Exhibit No. 50. All right.
20 And if we could scroll down to -- I believe it's page -- start
21 scrolling, I'll let you know when to stop. Just the one below
22 here.

23 Showing you Government's Exhibit 51. And just zooming
24 in on this picture that I'm circling here, where you see the
25 word yes next to it. Now, did you prepare this photographic

1 array?

2 A. No.

3 Q. All right. And was this photographic array prepared
4 by Sunrise Police Department?

5 A. Yes.

6 Q. And did you learn where this photograph was obtained
7 from?

8 A. Yes.

9 Q. And again, where was this photograph obtained from?

10 A. Florida driver's license records.

11 Q. Okay. And if we could just show Government's Exhibit
12 51. And is this the Florida DMV record that you just referred
13 to?

14 A. Yes.

15 Q. And who is this a motor vehicle record for?

16 A. Mr. Igbinedion.

17 Q. Now, turning our attention to Exhibit 26. First of
18 all, do you recognize Exhibit 26?

19 A. Yes.

20 Q. What is it?

21 A. Certified flight records from Spirit Airlines.

22 Q. I'm going to first zoom in on the flight information.
23 If -- Mr. Kerrigan, if we could zoom in there.

24 What is the date of the flight?

25 A. February 12th, 2019.

1 Q. And where is the flight going to and from?

2 A. Going from BWI to Ft. Lauderdale.

3 Q. And if we could show the passenger information,
4 please.

5 And who is the passenger for the flight?

6 A. David Green.

7 Q. And if we could return to the exhibit. And if we
8 could go to the next page. And is there an indication from
9 these records as to who paid for the flight?

10 A. Yes.

11 Q. And I think next page over. I'm sorry, one more over.

12 THE COURT: You're looking at Government's Exhibit 26;
13 is that correct?

14 MS. GOO: That's correct.

15 THE COURT: Thank you.

16 MS. GOO: If we could go to page 4.

17 BY MS. GOO:

18 Q. Who paid for this flight?

19 A. Mr. Igbinedion.

20 Q. Turning to the next page. And again, what is the date
21 of the flight for this?

22 A. February 26th, 2019.

23 Q. Who are the passengers for this flight?

24 A. Mr. Igbinedion and David Green.

25 Q. And where is the flight going to and from?

1 A. It's going from Ft. Lauderdale to BWI.

2 Q. And who paid for this flight? And I'm sorry, who was
3 the contact information for the flight first?

4 A. Mr. Igbinedion.

5 Q. Okay. And if we could turn to the next page. And who
6 paid for this flight?

7 A. Mr. Igbinedion.

8 Q. Now, turning your attention to Exhibit 27. Now, as a
9 part of -- before I -- if we leave the exhibit up.

10 As a part of the investigation, is it fair to say that
11 the FBI obtained information regarding the shipping information
12 from UPS, FedEx about some of these packages that were sent?

13 A. Yes.

14 Q. And I'm going to direct your attention specifically to
15 page 2 of Exhibit 27. If we could zoom in on the second message
16 in blue. Okay. And if we could just read the date for that
17 message.

18 A. March 23rd, 2019.

19 Q. And who is this -- just name of the sender -- titled?

20 A. Ghost.

21 Q. And if we could now -- and the information in that
22 message, what was that information?

23 A. Tracking number.

24 Q. Okay. And did you find out what shipping company had
25 that information? Or which shipping company was used for that

1 tracking?

2 A. Yes. UPS.

3 Q. If we could show --

4 MS. GOO: Court's indulgence. Court's very brief
5 indulgence.

6 BY MS. GOO:

7 Q. And showing you Government's Exhibit 38. If we could
8 actually have 38 and 27 up side-by-side. And if we could zoom
9 in on the second line of -- perfect. Thank you, Mr. Kerrigan.

10 And if you could compare the tracking information for
11 Government's Exhibit 38 to that text message in Government's
12 Exhibit 27.

13 And if you could actually just read that tracking
14 number out loud from the text message.

15 A. 1Z521V43PW00211175.

16 Q. And is that the same tracking number listed under the
17 delivery date of March 23rd, 2019, which is the second tracking
18 number under Government Exhibit No. 38?

19 A. Yes.

20 Q. And if you could read the delivery street name, city,
21 and state for that.

22 A. West Frederick Street, Lancaster, Pennsylvania.

23 Q. And if we could just turn back to Exhibit 27. And if
24 we could go to the first page of that, please. And if you could
25 just read the participant's names that are listed there.

1 A. D_Green226@Yahoo.com. Ghost.

2 Q. Showing you Government's Exhibit 135. Have you had an
3 opportunity to review Government's Exhibit 135?

4 A. Yes.

5 Q. And what is the first date mentioned in the set of
6 flight records?

7 A. September 5th, 2018.

8 Q. And what is the last date of the flight record listed
9 in this set of records from 135?

10 A. Are we able to go to the last --

11 Q. Yes.

12 A. -- record? Thank you.

13 Q. You have to go to the end, please. Yep.

14 MS. GOO: And Your Honor, actually, if I may approach
15 the witness briefly. I think for this exhibit it might easier
16 with having a paper copy.

17 THE COURT: Sure. That's fine.

18 THE WITNESS: Thank you.

19 BY MS. GOO:

20 Q. Just repeating again, what is the last date of the
21 latest date in the set of records that we have here?

22 A. March 4th, 2019.

23 Q. Okay. And how many flights are in that set of
24 records?

25 A. Nine flight records.

1 Q. Focusing first on page 21 of Exhibit 135. First of
2 all, what is the date of the flights here?

3 A. January 11th, 2019, and January 13th of 2019.

4 Q. And is this a round trip ticket?

5 A. Yes.

6 Q. And where is the flight originating from?

7 A. Ft. Lauderdale to BWI.

8 Q. And is it returning from BWI to Ft. Lauderdale?

9 A. Yes.

10 Q. And who is the passenger for this flight?

11 A. Mr. Igbinedion.

12 Q. Turning your attention to page 25 of this exhibit.
13 Again, if you could read the date of the outgoing flight and
14 then the return flight.

15 A. January 6 -- January 16th, 2019. January 20th, 2019.

16 Q. And where is the flight going to, from?

17 A. Ft. Lauderdale to BWI.

18 Q. And then the returning flight?

19 A. BWI to Ft. Lauderdale.

20 Q. And again, who is the passenger for this flight?

21 A. Mr. Igbinedion.

22 Q. Turning your attention to page 29. If you could read
23 the date for this flight, please?

24 A. February 13th, 2019.

25 Q. And where is the flight going from and to?

1 A. Ft. Lauderdale to BWI.

2 Q. And just briefly, as a part of the investigation --
3 actually, strike that.

4 And next, turning your -- I'm sorry, who is the
5 passenger of that flight?

6 A. Mr. Igbinedion.

7 Q. Turning your attention to lastly page 33. Last, if
8 you could again state the name or the date of the flight.

9 A. March 4th, 2019.

10 Q. Where is the flight going from and to?

11 A. From BWI to Ft. Lauderdale.

12 Q. And who is the passenger of that flight?

13 A. Mr. Igbinedion.

14 Q. Showing you Exhibit 136. And if we could just scroll
15 down a couple of pages; two or three. Okay. And again,
16 Mr. Mooney, have you had a chance to review Government's Exhibit
17 136?

18 A. Yes.

19 Q. And what are these records?

20 A. Certified Jet Blue flight records.

21 Q. And do they include flight information Mr.
22 Avboraye-Igbinedion?

23 A. Yes.

24 Q. Okay. Showing you what's marked as Government's
25 Exhibit 96. Now, first of all, I'm going to direct your

1 attention to the participants of the call. If you could just
2 read the first number out for the record.

3 A. 1 (305) 206-9557.

4 Q. And who is the other participant?

5 A. Ghost.

6 Q. Did you learn through your investigation who that 9557
7 number belonged to?

8 A. Yes.

9 Q. And who was that?

10 A. Mr. Leevensky Lambert.

11 Q. Now, if we could just turn your attention to the first
12 message dated January 12th, 2019, at 9:36 a.m. Do you see that?

13 A. Yes.

14 Q. And did you have an opportunity to review the
15 extraction report for the cell phone?

16 A. Yes.

17 Q. And what is the information that is sent, it appears
18 from Ghost to Mr. Lambert, at that date and time?

19 A. Location data.

20 Q. Okay. And did you have an opportunity to review that
21 location data?

22 A. Yes.

23 Q. And when you had that opportunity, what did you do
24 with it?

25 A. I took the latitude and longitude and plugged that

1 into a Google map function to determine where the location was.

2 Q. Showing you what's marked as Government's Exhibit 143.
3 And what is Government's Exhibit 143?

4 A. A map of the latitude and longitude information.

5 Q. Okay. Now, what is the red dot?

6 A. That is where the latitude and longitude resolves to.

7 Q. Okay. And that was the information that was in that
8 message?

9 A. Yes.

10 Q. And what -- where does the -- where is the dot?

11 A. Just outside of 314 Southway.

12 Q. Turning your attention to Exhibit 97. Do you
13 recognize this photograph?

14 A. Yes.

15 Q. And what is this a photograph of?

16 A. It's a photo of 4018 Chesmont Avenue.

17 Q. So if you could kind of just explain to us about how
18 it was that you discovered what 4018 Chesmont Avenue was in
19 terms of the importance of this location to the investigation.

20 A. Yes. In Mr. Lambert's cell phone extraction we
21 identified a photograph of Mr. Lambert waiting for a package
22 outside of a residence. We cross-referenced the delivery
23 addresses for that day and identified a list of addresses. Upon
24 running 4018 West Chesmont through Google Maps we identified
25 that the residence was identical to the residence that

1 Mr. Lambert was waiting outside of on that day.

2 Q. And where did you -- did you obtain this photograph?

3 A. Yes.

4 Q. And where is this photograph from?

5 A. Google Maps street view.

6 Q. Okay. And directing your attention to Government's
7 Exhibit 141. If we can a zoom in on that last line.

8 If you could just read the information, just the
9 tracking number first for the record.

10 A. 1Z940X334447725768.

11 Q. Okay. And what is the date of that delivery? I'm
12 sorry, what is this record?

13 A. Certified UPS delivery records.

14 Q. Okay. And so the number that you just read, is that a
15 UPS tracking number?

16 A. Yes.

17 Q. What is the date of the delivery?

18 A. January 12th, 2019.

19 Q. And what is the -- I'm not sure if you can tell, but
20 can you tell the delivery time from this zoom in here?

21 A. 11:38.

22 Q. And what is the address?

23 A. 4018 Chesmont Avenue, Baltimore, Maryland.

24 Q. And is that the address that we just saw shown in
25 Government's Exhibit 97?

1 A. Yes.

2 Q. Okay. Now, you mentioned the phone extraction from
3 Mr. Lambert's phone; is that correct?

4 A. Yes.

5 Q. Okay. So I'm going to show you Exhibit 110.

6 MS. GOO: Court's brief indulgence.

7 BY MS. GOO:

8 Q. I have been corrected; this is Exhibit No. 142. All
9 right. Do you recognize this photograph?

10 A. Yes.

11 Q. Okay. And what is this of?

12 A. A photograph of delivery instructions found in
13 Mr. Lambert's cell phone extraction.

14 Q. Okay. And if you could read the receiver's address.

15 A. 4018 Chesmont Avenue, 21206, Baltimore, Maryland.

16 Q. Okay. And I'm actually -- just because I'm not going
17 to be able to show both at the same time, I'm going to hand you
18 Government's Exhibit 141 and ask you to compare the tracking
19 number to the one that's shown before you.

20 A. Thank you.

21 Q. And Mr. Mooney, actually if you could just read the
22 tracking number aloud from the UPS record, Government's Exhibit
23 141.

24 A. 1Z940X334447725768.

25 Q. And if you could just read the last line before you on

1 the screen for Government's Exhibit 142.

2 A. UPS said before noon.

3 Q. And again, from the UPS exhibit before you in 141,
4 what was the delivery time?

5 A. 11:28.

6 Q. Lastly, showing you Exhibit 21. If we could zoom in
7 on the -- perfect. Thank you, Mr. Kerrigan.

8 The last line here where it -- if we can actually zoom
9 in on the third paragraph down where it says Egho. All right.

10 Now, you see here it says -- it mentioned -- what does
11 the last line say in Government Exhibit 21?

12 A. Saturday, two packs at 716 Melville Avenue.

13 Q. In preparation for your testimony this afternoon, did
14 you have an opportunity to look at the date of January 19th of
15 2019?

16 A. Yes.

17 Q. And what day of the week is that?

18 A. Saturday.

19 MS. GOO: Court's brief indulgence.

20 BY MS. GOO:

21 Q. And we're going to zoom back in again to Exhibit 21.
22 And again, if you could read under the first line that says
23 Egho, five pickups total. If you could read the third line that
24 starts with the day Friday.

25 A. Friday, 3016 Kenyon Ave and 2802 Maryland Ave.

1 Q. All right.

2 MS. GOO: Your Honor, the government has no further --
3 court's brief indulgence.

4 THE COURT: All right.

5 BY MS. GOO:

6 Q. And lastly, if you could just read the last line of
7 the paragraph titled Keon, three pickups.

8 A. Thursday, 761 Melville.

9 MS. GOO: Your Honor, the government has no further
10 questions for this witness.

11 THE COURT: Thank you very much, Ms. Goo.

12 Cross-examination Mr. Guillaume.

13 MR. GUILLAUME: Yes. Thank you.

14 CROSS-EXAMINATION

15 BY MR. GUILLAUME:

16 Q. Good afternoon, sir. How are you?

17 A. Good, sir. Thank you.

18 Q. Just want to clarify a few things. You were -- your
19 role in this case is a support role; is that correct?

20 A. Yes, sir.

21 Q. Okay. You're not the lead agent.

22 A. No, sir.

23 Q. Special Agent Bender was the lead agent; is that
24 correct?

25 A. Yes, sir.

1 Q. Okay. But you did become familiar with some of the
2 evidence in the case, right?

3 A. Yes, sir.

4 Q. Are you familiar with some of the names of the persons
5 that were charged in the case?

6 A. Yes, sir.

7 Q. Are you familiar with the name David Green?

8 A. Yes, sir.

9 Q. And did you have an opportunity to examine evidence
10 related to Mr. David Green?

11 A. Yes, sir.

12 Q. Okay.

13 MR. GUILLAUME: No further questions. Thank you.

14 THE COURT: Thank you, Mr. Guillaume.

15 You may step down, Mr. Mooney. You shouldn't discuss
16 your testimony with anyone in the unlikely event you're called
17 back to the witness stand.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Next witness for the
22 government? Is this a time to take a break, perhaps for some
23 scheduling and break for lunch?

24 MS. GOO: Yes, Your Honor.

25 MR. DELANEY: Yes, Your Honor.

1 THE COURT: And we can discuss the matter of the
2 testimony at two o'clock as opposed to four o'clock for Kamisha
3 Jones.

4 MR. DELANEY: Thank you, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, we're
6 going to take a break now, and you have a little bit longer for
7 lunch. We'll do our best to start promptly at two o'clock.
8 We'll see you at two o'clock. Thank you very much.

9 (Jury exited the courtroom at 12:35 p.m.)

10 THE COURT: Okay. For scheduling purposes, Mr.
11 Delaney, who is the next government witness?

12 MR. DELANEY: The government is prepared to rest, Your
13 Honor.

14 THE COURT: All right. And then Mr. Guillaume, under
15 Rule 29(c) you don't have to move for judgment of acquittal, but
16 I assume at the conclusion of government's case, for purposes of
17 the record, you'll move for judgment of acquittal.

18 MR. GUILLAUME: I will. There is one other matter
19 though. There's the matter of some testimony that we were
20 working out. Just want to figure out -- before I do that I want
21 to --

22 THE COURT: I understand. That's fine. Just starting
23 to go into the housekeeping here.

24 And we have Kamisha Jones by telephone under Rule 15.
25 If counsel agree we can proceed in that fashion. Essentially,

1 it's an audio deposition right on the record here in the
2 courtroom.

3 Mr. Gurevich, if you'll make sure we're all set to go
4 with this, I would like to have her on the line ahead of time,
5 maybe ten of two, to make sure we got everything lined up. And
6 she'll be sworn and we will swear her on the telephone under
7 oath. I don't know how else to do this, but I think that's
8 fine. Rule 15 allows some latitude if there's an agreement of
9 counsel.

10 And we'll -- she'll be your witness Mr. Guillaume, but
11 it doesn't in any way prejudice you in terms of your
12 presentation of a defense case. And she'll be called you and
13 then the government will cross-examine. Is that agreeable to
14 you?

15 MR. GUILLAUME: Yes, Your Honor.

16 THE COURT: Agreeable to you, Mr. Delaney?

17 MR. DELANEY: It is, Your Honor. Thank you.

18 THE COURT: With respect to a little bit of
19 housekeeping here, just if we have a few minutes. I could be
20 wrong on this, but Ms. Goo, if you want to go over the exhibit
21 checklist here.

22 I have that Exhibit 1 was admitted into evidence.

23 1A was identification only.

24 2 was admitted into evidence.

25 2A was by identification only.

1 3 was admitted into evidence.

2 3A was by ID only.

3 Then 4 of Charles Gamper was introduced, the video
4 itself.

5 Exhibit 5, the deposition video of Norman Geller.

6 Number 6, deposition of Richard Provolt.

7 Then I have exhibits V-1, V-2, V-3A, V-3B, V-4 all be
8 having been admitted.

9 I have V-5 as blank, there was no V-5.

10 I have exhibit V-6, V-7 admitted.

11 V-8, the statement of Francis Williams, has been
12 withdrawn so that will not be introduced into evidence.

13 MS. GOO: Yes. That's correct, Your Honor.

14 THE COURT: V-9, V-10 has been introduced in evidence.

15 I don't have V-11 in -- no, I'm sorry, V-11 was in
16 evidence. I recall that with Mr. Carper today, so that's in
17 evidence.

18 V-12, 13, 14, 15, 16, 17, all in V's, were admitted.
19 And I believe V-15 was admitted as well if I'm not mistaken.

20 MS. GOO: Yes, Your Honor.

21 THE COURT: All right. So they've all been admitted.

22 Then the David Green plea agreement, Exhibit 10, is
23 admitted, but we've noted that we're going to take out the
24 stipulation and statement of facts attached thereto.

25 MS. GOO: Yes, Your Honor.

1 THE COURT: And then 11, the photo of Medard Ulysse, a
2 co-defendant.

3 Exhibit 12 was admitted.

4 I don't have Exhibit 12-A having been admitted.

5 MR. DELANEY: It was not, Your Honor.

6 THE COURT: All right. And then I have Exhibit 13-A,
7 Air B&B photo has been admitted.

8 I don't have Exhibit 14 or 14A having been admitted.

9 MS. GOO: They have not been admitted.

10 THE COURT: Okay. And then 15 and 16 have been
11 admitted.

12 17 was reserved.

13 18, 19, and 20 have all been admitted, as have
14 Exhibits 21, 22, 23, 23-A, 24, 25, 26 are all admitted.

15 I don't have down that 26-A was admitted.

16 MS. GOO: It was not admitted, Your Honor.

17 THE COURT: And then Exhibit 27, 27A, 28, 29, 30, 31,
18 and 32 have all been admitted.

19 MS. GOO: Yes.

20 THE COURT: I don't have Exhibits 33, 34, and 35 in
21 evidence.

22 MS. GOO: That is correct, Your Honor.

23 THE COURT: Okay. All right. And then 36 was
24 admitted.

25 37, 38, UPS certification, 38-A I don't think was

1 admitted.

2 MS. GOO: It was not.

3 THE COURT: And then 39, jail call recording was
4 admitted.

5 45, FedEx records were admitted.

6 All of these under local Rule 107.5 as to no objection
7 as they were referenced in testimony.

8 I don't have 45-A having been admitted.

9 MS. GOO: Correct, Your Honor.

10 THE COURT: And then 46 I don't have having been
11 admitted.

12 MS. GOO: That's correct, Your Honor.

13 THE COURT: And 46-A was not admitted.

14 MS. GOO: That's correct.

15 THE COURT: And then we have Exhibit 50 was admitted.
16 Exhibit 51, was that admitted as well?

17 MS. GOO: Yes.

18 THE COURT: I think I have to go back.

19 MS. GOO: That was just in Mr. --

20 THE COURT: That was this morning, yeah.

21 And then 50. There's no 52, 53, 54.

22 MS. GOO: Correct.

23 THE COURT: Exhibits 55 and 56 were admitted. 56-A
24 was not admitted.

25 MS. GOO: Yes.

1 THE COURT: And then Exhibit 57 was admitted.

2 MS. GOO: Yes.

3 THE COURT: 58 was not admitted.

4 MS. GOO: 58 was admitted, Your Honor.

5 THE COURT: Was admitted. All right. I'm just going
6 over this then. 58-A and -- 58-A was also admitted, was it not?

7 MS. GOO: Yes, Your Honor.

8 THE COURT: They were admitted.

9 And 59 and 60 were admitted.

10 61 and 62 were not admitted.

11 MS. GOO: Correct, Your Honor.

12 THE COURT: 63 was admitted, as was 64.

13 There are no 65, 66, 67, 68, or 69.

14 Exhibit 70, Sooraj Paliwal's proffer letter was
15 admitted.

16 71 was admitted.

17 I don't have a 71-A as having been admitted.

18 MS. GOO: That's correct, Your Honor.

19 THE COURT: And then 72, photo of Airbnb was admitted.

20 MS. GOO: Yes.

21 THE COURT: But I don't have 73 records being
22 admitted.

23 MS. GOO: That's correct, Your Honor.

24 THE COURT: All right. And then 74, video at Airbnb
25 house, I don't have that being admitted.

1 MS. GOO: It was not, Your Honor.

2 THE COURT: Then 70 -- there's 75 and 76 and 77 were
3 admitted, as were --

4 There is no 78 or 79.

5 Exhibit 80 and 81 were admitted.

6 MS. GOO: Yes.

7 THE COURT: There's no 82, 83, or 84, but then 85 was
8 admitted.

9 And I don't have 86 having been admitted.

10 MS. GOO: That's correct, Your Honor.

11 THE COURT: And then 87 was admitted.

12 87A was admitted.

13 There is no 88 or 89.

14 MS. GOO: Your Honor, I don't believe there was an
15 87A.

16 THE COURT: I'm sorry?

17 MS. GOO: There was no 87A it was just 87.

18 THE COURT: That's fine. Then 87 was admitted and
19 there's no 87A.

20 Then there's no 88 or 89.

21 And then 90 was admitted, as was 91, 92, 93, 94, 94A,
22 95, 96, 96A, 96B.

23 I have 96B having been admitted, I don't have 96C
24 having been admitted.

25 MS. GOO: I do believe 96C was admitted.

1 THE COURT: Just double check. Just go back and
2 double check.

3 MS. GOO: Yes.

4 THE COURT: 97, photo of 4018 Chesmont Avenue was
5 admitted.

6 98, 99, and 100 were admitted.

7 I don't have 105 or 106 having been admitted, or 107.

8 MS. GOO: That's correct, Your Honor.

9 THE COURT: All right. And then 110, the plea
10 agreement letter of Amaya English. As to that, that would be
11 admitted, but again, we'll take out the statement of facts
12 stipulation because of any hearsay indications.

13 Exhibit 111 was not admitted.

14 MS. GOO: Correct.

15 THE COURT: There was no 112 or 113 or 114.

16 And then exhibits 115, 116, 117, 118, 119, 120, 121,
17 122, and 123 were all admitted.

18 There were no Exhibits 124 through 129.

19 And then the CAST report was admitted with Agent
20 Fowler was Exhibit 130.

21 There are no Exhibits 131, 132 or 133 or 34.

22 Exhibit 135 was admitted.

23 135A was not admitted, there was no certification.

24 MS. GOO: Yes.

25 THE COURT: And then 136 was admitted from Jet Blue

1 but 136A was not admitted.

2 MS. GOO: Yes.

3 THE COURT: And then 137, Motel 6 records were
4 introduced, but there was no 137A certification.

5 MS. GOO: Yes.

6 THE COURT: And then 138, Lyft records were
7 introduced. And 138A there was no Lyft certification, correct?

8 MS. GOO: Correct.

9 THE COURT: And then Exhibit 140, UPS delivery to
10 Southwest, I think it was admitted this morning if I'm not
11 mistaken.

12 MS. GOO: Yes.

13 THE COURT: And then there were a few others in
14 addition to that. Exhibits 141, 142, and 143 were admitted, and
15 I think that's tops us off.

16 MS. GOO: And there's one photo, this was an exhibit
17 out of order, it's Exhibit 7 which is a photograph of Mr.
18 Igbinedion.

19 THE COURT: Exhibit 7 which was?

20 MS. GOO: I don't think it was a part of the original
21 --

22 THE COURT: No, I know. I know, I'm looking here.
23 Now, wait a minute. Yes. Government's Exhibit 7 was introduced
24 with the testimony of Mr. Mooney which was proffered as a
25 photograph of the defendant. So that's what I have in terms of

1 exhibits having been admitted.

2 We will proceed at two o'clock promptly. I'll try to
3 get back here by ten of two to make sure we're ready with the --
4 with audio testimony of Kamisha Jones. We will proceed with
5 that, Mr. Guillaume, and then the government will rest.

6 And then, Mr. Guillaume, what other witnesses are you
7 planning to call at this time?

8 MR. GUILLAUME: Your Honor, we may have one additional
9 witness but I'm not certain.

10 THE COURT: Okay.

11 MR. GUILLAUME: It would just be one witness.

12 THE COURT: I'm -- you had potentially listed DiAngelo
13 Sawyer and Keirah Fallon, but --

14 MR. GUILLAUME: Ms. Fallon may be a witness but I'm
15 not certain.

16 THE COURT: What about Sawyer?

17 MR. GUILLAUME: No, Your Honor.

18 THE COURT: All right. And then again, Mr.
19 Igbinedion, I want to make sure you've had an opportunity to
20 talk with Mr. Guillaume. Again, at some point in time I'm going
21 to inquire as to whether or not you're going to testify or not,
22 and I want to make sure you understand your rights at this point
23 in time.

24 Is it anticipated that he is going to testify or not
25 testify, Mr. Guillaume?

1 MR. GUILLAUME: I don't believe so, Your Honor. I
2 don't think he will but --

3 THE COURT: You still have time to talk. Again, Mr.
4 Igbinedion, you're -- no inference can be drawn against you if
5 you do not testify. You have a right to testify. The
6 government cannot call you as a witness, I could not call you as
7 a witness. Do you understand that?

8 THE DEFENDANT: Understood, sir.

9 THE COURT: Okay. So you have a time to talk to your
10 -- Mr. Igbinedion about it. And I believe his mother has been
11 here in the courtroom, has she not?

12 MR. GUILLAUME: Yes, Your Honor.

13 THE COURT: He certainly is allowed to talk to the
14 mother at the lunch hour about this thing and make sure he
15 understands his rights in that regard. And then we'll see where
16 we are.

17 Once we finish the testimony and evidence, we'll have
18 to have a charge conference here in a little bit. Are there any
19 additional -- basic instructions have already been submitted,
20 Mr. Guillaume. Are there any additional instructions that you
21 desire?

22 MR. GUILLAUME: We don't have any additional
23 instructions.

24 THE COURT: Essentially, it's basically -- it's basic
25 boilerplate instructions and instruction on mail fraud

1 conspiracy, and then instructions just on the basic mail fraud
2 charge which would apply to Counts 3, 4 -- I'm sorry, 4, 5, 6
3 and 7.

4 we will explain to the jury that the case -- Counts 2
5 and 3 are being dismissed on government motion.

6 Correct, Mr. Delaney?

7 MR. DELANEY: Correct, Your Honor.

8 THE COURT: So we will explain to the jury -- I don't
9 send the indictment in I just summarize the indictment in my
10 instructions. And we'll just note that for reasons they don't
11 need to worry about that the instruction as to mail fraud
12 applies to Counts 3 -- I'm sorry, applies to Counts 4, 5, 6, and
13 7.

14 And then conspiracy is Count 1, and they don't need to
15 worry themselves about why 2 and 3 are not submitted. Does that
16 work for you, Mr. Delaney?

17 MR. DELANEY: It does.

18 THE COURT: Mr. Guillaume, work for you as well?

19 MR. GUILLAUME: Yes, Your Honor.

20 THE COURT: So is there any other loose ends we need
21 to address before I come back around ten of two or so?

22 MR. DELANEY: No. Thank you, Your Honor.

23 MR. GUILLAUME: Court's brief indulgence.

24 THE COURT: Sure. Sure.

25 MR. DELANEY: Your Honor, Mr. Guillaume and myself and

1 Ms. Goo have been discussing this morning, there is the
2 possibility that Mr. Guillaume will call Special Agent Jason
3 Bender for the purpose of a few narrow questions. We're
4 discussing whether or not we need to go through regulations.

5 The government is hoping to be able to discuss with
6 Mr. Guillaume the very specific questions he will ask in advance
7 that will allow us not to have to slow things down with the
8 process.

9 THE COURT: I'm sorry. So will allow you to do what?

10 MR. DELANEY: If we could discuss the very narrow
11 questions that Special Agent Bender will be asked in advance,
12 the government may not need to go through the process of trying
13 to restrict Special Agent Bender's ability to testify. We're
14 trying to --

15 THE COURT: Wait and see. Certainly free to call him,
16 he's the case agent, and defense counsel is free to call the
17 case agent and conduct whatever examination he wants as far as
18 I'm concerned. There aren't any privileges that attach to it,
19 he's the case agent, and it happens that case agents are called
20 and cross-examined by defense lawyers. I'm sure we're all aware
21 of that.

22 MR. DELANEY: There's the Toohey protocol, we're
23 consulting with our office, and we do believe we'll have it all
24 worked out prior --

25 THE COURT: Well, then make sure you work that out.

1 Because in terms of protocols, as far as I'm concerned, there's
2 nothing the least bit unusual with the defense attorney calling
3 a case agent. There's nothing the least business unusual about
4 cross-examining. And there aren't any privileges that attach to
5 it, and there aren't any protocols that preclude it, to put it
6 bluntly.

7 And as far as I'm concerned, if you think there are
8 protocols that are precluded you need to notify me ahead of
9 time. Because I've not seen any reason not to have that be
10 done. It happens or it doesn't happen sometimes, it depends on
11 a case by case basis.

12 MR. DELANEY: I understand, Your Honor. Thank you.

13 THE COURT: All right. With that, I will say that --
14 just have -- you all can talk about this. I really do believe
15 that Mr. Guillaume talk to Mr. Delaney and Ms. Goo about this,
16 but Juror No. 3 and 5 are the only two jurors that have had
17 previous jury experience. And Juror No. 3 is an
18 African-American woman, works for the State of Maryland in the
19 parole system. She has had prior criminal jury experience.

20 Of Juror No. 39, a Caucasian woman -- Juror No. 5 is
21 39 years of age, Caucasian woman. She's had civil jury trial
22 experience before but never criminal jury trial experience. I
23 think all these jurors have been very attentive. I'm very much
24 inclined to -- when I give the instructions to the jury to
25 designate Juror No. 3 as the foreperson of the jury. And I'll

1 explain to them because of her prior criminal jury experience.
2 So if anyone has any objections with that, let me know, but I'll
3 certainly be glad to hear your input, but I think that would
4 make perfectly good sense.

5 MR. GUILLAUME: Your Honor, I don't object to the
6 naming of that particular juror, but the explanation, I think, I
7 would not like the Court to give. Because of the reasons you
8 chose that particular juror.

9 THE COURT: In all candor, Mr. Guillaume, I'm not sure
10 why you'd object to that. I'm trying to explain to you why I
11 picked her out. I mean, I do this all the time, and the jurors
12 are entitled to know. And it's just -- it's quite frankly, I
13 think it's improper to do it otherwise. Otherwise the jurors
14 are like why did you select her as opposed to someone else. And
15 the jury -- and I will note your objection and it's overruled.

16 I think the jury is entitled to be told the way we do
17 things. And I'll indicate no one seems to object that she --
18 only the two of them have prior jury experience. That's
19 perfectly understandable to the jury. And the fact that she had
20 criminal experience and Number 5 has had civil experience is
21 also perfectly understandable and makes good sense, I think.

22 So I will explain that to them, and I'll indicate that
23 as to -- I will indicate that as to her selection everyone
24 agrees. I won't indicate that you don't agree that I should
25 explain why, but I'll indicate that we all agree that she should

1 be the foreperson.

2 Is that agreeable to the government?

3 MR. DELANEY: Yes, Your Honor.

4 THE COURT: Mr. Guillaume?

5 MR. GUILLAUME: Yes, Your Honor. Just so the record
6 is clear, I respect the court's decision, just want to be clear
7 that I think that that gives that juror potentially an outsized
8 role in the deliberations, but I understand. I just want to
9 preserve the record for my client.

10 THE COURT: Sure. That's right. But you don't object
11 to her selection?

12 MR. GUILLAUME: No, that's --

13 THE COURT: That's fine. I'll just indicate that we
14 agree she should be the one. And I'll just say -- I'll say it's
15 agreed that she will be the foreperson. And I'll explain that
16 I've noted she had prior criminal jury experience and she will
17 be the foreperson.

18 So what I envision we -- hopefully we get started on
19 charge conference this afternoon. And then what I envision,
20 perhaps is -- I will say this. I'm a little bit nervous about
21 -- about having -- in terms of closing tomorrow morning, how
22 long do you think government is going to be?

23 MS. GOO: Your Honor, I'm going to say conservatively
24 an hour. It's entirely possible I don't get to the full hour,
25 but I would say conservatively --

1 THE COURT: All right. How long do you think?

2 MR. GUILLAUME: I would like to request an hour. I
3 may not use it all.

4 THE COURT: Rebuttal, so looking at 20 minutes of
5 rebuttal?

6 MR. DELANEY: That sounds conservative.

7 THE COURT: Two hours for argument, and then I've got
8 to read the instructions. And what is making me a little
9 nervous is at three o'clock I have to be down for a ceremony in
10 the courtroom with all the other judges and with our law clerks,
11 and there's a ceremony. And I can always be called out of the
12 ceremony off the bench to come and answer questions, but then
13 there's sessions with the clerks. This is an annual event. And
14 I'm a little bit concerned about backing up into that event and
15 suddenly, you know, it's not fair to my law clerks or to my
16 colleagues on the bench in terms of the photographs that are
17 taken or whatever. Not that they have to have me in the
18 photograph, but -- we're laughing here, but they may want me --

19 MR. DELANEY: If we want --

20 THE COURT: They may insist that I'm in the
21 photograph. So I just don't know -- let's just see how we play
22 out in terms of how much time this will take this afternoon, I
23 guess is my question.

24 MR. GUILLAUME: I don't have any objection to the
25 court doing argument on Friday. Frankly, it gives me more time

1 to prepare.

2 THE COURT: Well, that's what I'm thinking. I'm
3 thinking what we may do is --

4 MR. GUILLAUME: Sorry.

5 MR. DELANEY: Your Honor, if I may be heard briefly.

6 THE COURT: Here's the problem. I don't like to
7 instruct -- I don't like to instruct after -- I always instruct
8 after closing argument. Generally -- we could always have
9 closing arguments be on Thursday and then I could -- and we
10 could -- and then I could instruct the jury Friday morning,
11 that's possible, and that would allow time for digest -- why
12 don't you talk about how you feel comfortable with this and
13 we'll deal with that as well.

14 So with that, I've got to get to this bench meeting
15 right now, and we stand in recess until ten minutes of two.
16 We're going to come back and try to get organized for the
17 witness. Thank you all very much.

18 THE CLERK: All rise. This court stands in recess.

19 (Recess was taken from 12:54-2:09 p.m.)

20 THE COURT: Good afternoon, everyone. We have the
21 witness apparently Kamisha Jones who is -- I see on the video
22 screen here, and we're ready to have her examination.

23 I think what I'll do is -- those in the far back may
24 be seated.

25 what I'll do is, I'll just explain to the jury that

1 we're talking -- the person in the back may be seated please.

2 Thank you. You may be seated, please. Thank you.

3 The person in the back -- I mean, the person on the
4 screen is ready to be examined. I'll indicate to the jury that
5 we're going to take her out of turn and it's a witness being
6 called by Mr. Guillaume on behalf of the defendant. Is that
7 agreeable to the government?

8 MR. DELANEY: The government is prepared to rest.

9 THE COURT: We'll do that later.

10 Mr. Guillaume, that's agreeable to you?

11 MR. GUILLAUME: Yes, Your Honor.

12 THE COURT: All right, good. And then we'll bring the
13 jury in and we'll go over the matter of resting in a minute
14 here.

15 THE CLERK: Ms. Jones, you can hear me, correct?

16 THE WITNESS: Yes.

17 THE COURT: Thank you all.

18 (Jury entered the courtroom at 2:11 p.m.)

19 THE COURT: Ladies and gentlemen, we're running a
20 little bit late. We had to organize something from the
21 technology department.

22 We're going to be taking a witness out of turn here.
23 Kamisha Jones is a witness being called by the defense. Now,
24 the government has not yet rested, but for strategic purposes
25 and logistics we've indicated to Mr. Guillaume we certainly can

1 take this witness out of turn. And she is being examined here
2 by video hookup here in the courtroom, and it is Kamisha Jones.

3 And Mr. Gurevich, has she been sworn yet?

4 THE CLERK: She has not.

5 THE COURT: If you'll swear the witness, please. If
6 you'll stand and raise your right hand Ms. Jones, please.

7 (KAMISHA JONES, duly sworn via Zoom.)

8 THE CLERK: Can you please state your full name for
9 the record?

10 THE WITNESS: Kamisha Jones.

11 THE CLERK: Thank you.

12 THE COURT: With that, Mr. Guillaume, you may proceed.

13 MR. GUILLAUME: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. GUILLAUME:

16 Q. Good afternoon, ma'am. Can you hear me?

17 A. Yes.

18 Q. Okay. Can you see me from where you are? I'm
19 standing here with my hand up.

20 A. Yeah. Yeah.

21 Q. Thank you for joining us this afternoon.

22 Ma'am, where are you right now located? Just what
23 state?

24 A. Florida.

25 Q. Okay. And my name is Alfred Guillaume, I'm a defense

1 attorney. We never met before, have we?

2 A. No.

3 Q. Never spoken either, right?

4 A. No.

5 Q. Okay. Thank you for joining us. I have a few
6 questions I'd like to ask you.

7 A. Okay.

8 Q. And I will try not to take up too much of your time.
9 Ma'am, did you previously -- did you ever previously
10 testify in front of a grand jury in the Federal District Court
11 of Maryland?

12 A. Yes.

13 Q. Do you remember what year that was?

14 A. Maybe last year.

15 Q. Would it have been in 2021?

16 A. Yeah. Yeah.

17 Q. Does that sound right?

18 A. Yeah. 2021, yes.

19 Q. And ma'am, just to be clear, I was not involved in
20 that process at all, correct?

21 A. Right. Correct. No, you wasn't.

22 Q. And when you appeared in front of the grand jury in
23 2021 you were asked -- were you asked questions by the federal
24 prosecutor in this proceeding?

25 A. Yes. I think that's who it was, yes.

1 Q. And you also had your own lawyer. You were
2 represented by a lawyer at the time; is that right?

3 A. Yes.

4 Q. Okay. Now, I want to ask you the same sort of -- or
5 similar type of questions that you were asked back then, okay?

6 A. Yes.

7 Q. Ma'am, do you know an individual by the name of Medard
8 Ulysse?

9 A. Yes.

10 Q. Do you know him by any other name?

11 A. Jay.

12 Q. Okay. Who is this person and how do you know him?

13 A. He's just my ex-boyfriend.

14 Q. Okay. You said your ex-boyfriend?

15 A. Uh-huh. Yes.

16 Q. What timeframe were you involved in a relationship
17 with him?

18 A. 2018 to 2019.

19 Q. And you lived in Miami, Florida; is that right?

20 A. Yes.

21 Q. Where -- do you know where Jay lives? I'm going to
22 call him Jay for purposes of this conversation, okay?

23 A. Do I know where he lives now?

24 Q. No, at the time. Do you know where he lived?

25 A. Miami.

1 Q. Okay. When did you first start dating him? If you
2 can remember, what year would it have been?

3 A. I'm thinking 2018, I'm thinking.

4 Q. Did you ever live together?

5 A. Yes.

6 Q. Okay. And when was that? When and where was that?

7 A. 2018, 2019. And where? We lived in Miami.

8 Q. Did you share a house or apartment together?

9 A. An apartment.

10 Q. Okay. Do you know what he did for a living?

11 A. He told me he sold dogs.

12 Q. Did you come to find out whether that was true or not?

13 A. Right. Yes.

14 Q. What did you find out? Did you find out that was true
15 or untrue?

16 A. Well, it was untrue.

17 Q. What do you know about what he did to earn money at
18 that time?

19 A. Yes.

20 Q. Can you tell me --

21 A. Later on, yes.

22 Q. Can you tell me what you know about what he was doing
23 to earn money at that time?

24 A. Later on he was -- he was -- I don't know, working
25 with some guy picking up packages and stuff.

1 Q. Okay. You said picking up packages?

2 A. Uh-huh.

3 Q. Can you give us a little bit more detail about what
4 you know about that?

5 A. He would have somebody come and, I guess, they mail
6 the package off and he would get them and send them somewhere
7 else.

8 Q. I'm sorry, I didn't catch the last part of what you
9 said. You said he would have somebody come out and get them and
10 then what?

11 A. They send them to him. They send them to him and
12 he'll hold it or take it somewhere else.

13 Q. When you say they, who are you referring to?

14 A. I don't know, some people from Canada.

15 Q. Okay. And your understanding is that people from
16 Canada would send him packages?

17 A. Right.

18 Q. Did you ever see him opening any of these packages?

19 A. Yes.

20 Q. Approximately how many times did you see him open
21 packages?

22 A. Less than ten.

23 Q. Did you see what was inside the packages those times
24 that you noticed him?

25 A. It was just money.

1 Q. You said it was just money?

2 A. Yeah.

3 Q. Did you know -- if you have an idea, how much money,
4 more or less?

5 A. It would range different times. It would be
6 different. Different amounts.

7 Q. Okay. Can you give me a ballpark figure? Was it \$10?
8 Was it \$100? Was it a thousand dollars?

9 A. No, it would be -- sometimes be like 5,000; 2,000;
10 9,000; 7,000.

11 Q. And would these packages be sent to your home that you
12 shared with him in Miami?

13 A. No.

14 Q. Where would they be, if you know?

15 A. Random addresses.

16 Q. Did you ever see him, Jay, go to any random addresses
17 and pick up the packages?

18 A. Yes.

19 Q. You were with him approximately how many times?

20 A. Less than ten.

21 Q. Was anyone else present or was it just the two of you?

22 A. Just the two of us.

23 Q. Did you ever pick up any packages for him at his
24 request?

25 A. Yes.

1 Q. Approximately how many times?

2 A. Less than ten.

3 Q. Okay. And did you open any of those packages?

4 A. Yes.

5 Q. And what was inside when you opened the -- your
6 packages?

7 A. Money.

8 Q. And did you count the money that you opened of the
9 package that you opened?

10 A. Yes, sometimes. Sometimes not though.

11 Q. From a -- just as an estimate, from the packages that
12 you opened, how much money would be inside, more or less? I
13 know it's varying amounts I'm assuming?

14 A. Yeah. Yeah.

15 Q. But can you give me a ballpark figure of some of the
16 amounts?

17 A. Maybe 8,500; 9,000; 9,800.

18 Q. Do you know anyone by the name of McArnold
19 Charlemagne?

20 A. No.

21 Q. Do you know anyone by the name of Zo?

22 A. No.

23 Q. Did you ever see Jay open packages with anyone else?

24 A. No.

25 Q. When you would communicate with Jay would you use your

1 -- how would you communicate with Jay if you wanted to -- if he
2 wasn't with you at the same place at the same time?

3 A. On the phone.

4 Q. I'm sorry, I didn't catch what you said.

5 A. On the phone. On the phone. On the phone.

6 Q. would you call him on your regular cell phone or would
7 you use an application to call him?

8 A. An app.

9 Q. Do you remember the name of the app?

10 A. I don't remember the name of the app.

11 Q. Okay, that's fine. Just a few more questions for you,
12 ma'am.

13 A. Uh-huh.

14 Q. How would you describe your relationship with Jay?

15 A. Bad. He was just always cheating on me so it was --
16 he would go on these trips.

17 Q. I'm sorry to hear that. Was Jay ever abusive towards
18 you?

19 A. He did choked me one time, but never closed fist or
20 anything.

21 Q. I'm sorry, I didn't catch the first part of what you
22 said.

23 A. I said he choked me before. Choked me before, but
24 never a closed first or black eye or --

25 Q. I'm sorry that that happened to you, ma'am. Do you

1 remember --

2 A. That's okay.

3 Q. -- the circumstances of why that happened?

4 A. I caught him cheating on me and I confronted him.

5 Q. Okay. It didn't have anything to do with the package
6 operation?

7 A. No, I just caught him cheating.

8 Q. When you mentioned a moment ago that people from
9 Canada sent packages, what were you referring to?

10 A. Am I referring to?

11 Q. Yes. Can you give me an explanation of what you're
12 talking about? You said people from Canada, you mentioned that
13 earlier, a few moments ago.

14 A. I -- just what he told me. He just said that he had
15 people from Canada that was sending him packages down, you know.

16 Q. Did you ever hear Jay speak with anyone about this
17 package operation that he was doing?

18 A. The people from Canada.

19 Q. You did hear that?

20 A. Majority of the time they spoke in French, most of the
21 time, but --

22 Q. Do you speak French, ma'am?

23 A. No, I don't speak French.

24 Q. Did you hear him speaking any other time in English
25 about the same thing?

1 A. Yeah, it was -- about the same thing? No.

2 Q. About -- I'm sorry, that question wasn't clear.

3 A. Yeah.

4 Q. Did you ever hear him speaking in English about -- to
5 the people in Canada about the package operation?

6 A. Not about the package operation.

7 Q. What did you hear him speaking to the people in Canada
8 about in English?

9 A. They was just arguing about some money.

10 Q. Ma'am, did you ever do anything for -- do anything at
11 the request of Jay as related to this -- this package operation,
12 other than pick up the packages yourself that you've already
13 testified to?

14 A. No.

15 Q. Were you ever asked to hold any money for him?

16 A. Oh, yes.

17 Q. Approximately how much money do you think you held for
18 him at his request?

19 A. I think it was 73, 74,000.

20 Q. And what year was this, do you remember?

21 A. 2018 I'm thinking.

22 Q. Did he ever ask you to book any flight for him or
23 other people?

24 A. Yes.

25 Q. Approximately how many times did you do that or did

1 you do it?

2 A. Yeah, I booked some flights.

3 Q. Approximately how many times did you do that?

4 A. I don't remember.

5 Q. Do you remember if it was just for him or for others
6 or for both him and others?

7 A. It was both.

8 Q. Do you remember the names of the other people that you
9 booked flights for other than Jay?

10 A. No, I don't remember.

11 Q. Did Jay provide you the information for the other
12 people or did the other people provide you their own
13 information?

14 A. No, Jay provided it.

15 Q. And I think I may have asked you this, but I'm sorry
16 if I'm repeating myself. You said you did remember how many
17 times that was?

18 A. I don't remember how many people.

19 Q. That's fine. I only have a few more questions, ma'am.
20 when did you stop seeing Jay?

21 A. I'm thinking 2019 --

22 Q. Do you remember approximately --

23 A. -- or 2020.

24 Q. 2019 or '20?

25 A. Yeah.

1 Q. would it have been the end of 2019 to the beginning of
2 2020?

3 A. I don't know. I don't understand. I really don't
4 remember. I know it was --

5 Q. That's fine.

6 A. I'm sorry.

7 Q. I'm sorry, I cut you off. You said you know what?

8 A. I just know most, like, two years that we was talking
9 and probably had contact.

10 Q. Ma'am, I just have one final question for you, thank
11 you for your patience thus far.

12 Did you ever talk to Jay about the source of the money
13 in the boxes that you and he opened?

14 A. No, I never asked how they would send it. He just
15 said it was coming from Canada. That it was coming from Canada.

16 Q. Okay. I think that's all I have for you, ma'am. Just
17 going to check my notes and make sure before I sit down.

18 MR. GUILLAUME: Court's brief indulgence.

19 THE COURT: Take your time, Mr. Guillaume.

20 BY MR. GUILLAUME:

21 Q. Ma'am, just want to be clear. You never saw Jay
22 assault anyone besides yourself?

23 A. Yes. I -- well, I never saw him, no. I heard, but I
24 never saw him.

25 Q. Did you -- hear from who, from Jay?

1 A. Yeah.

2 Q. What did Jay tell you?

3 A. He was fighting with his friend.

4 Q. Did he say why?

5 A. I don't remember. He just -- I don't know, I think he
6 was just upset and the friend said something and they got into a
7 fight.

8 Q. Okay. Thank you so much, ma'am. I have no further
9 questions.

10 THE WITNESS: Okay. No problem.

11 THE COURT: Thank you very much, Mr. Guillaume.

12 Mr. Delaney or Ms. Goo, any questions?

13 MS. GOO: No questions, Your Honor.

14 THE COURT: No questions.

15 Thank you very much, Ms. Jones, for making yourself
16 available on such quick notice. And your testimony has been so
17 noted and thank you very much.

18 THE WITNESS: Okay.

19 THE COURT: You're excused and that will conclude your
20 testimony. Thank you very much.

21 Now there are some matters that we need to pick up out
22 of the of the presence of the jury for a few minutes?

23 MR. DELANEY: Yes, Your Honor.

24 THE COURT: Why don't you all be excused for a few
25 minutes.

1 (Jury exited the courtroom at 2:26 p.m.)

2 THE COURT: So this -- Mr. Delaney, do I understand
3 that the government is now resting?

4 MR. DELANEY: That's correct, Your Honor.

5 THE COURT: The government has now rested and
6 concluded its case.

7 Mr. Guillaume, just for matters of the record, you're
8 now moving for a judgment of acquittal under Rule 29; is that
9 correct?

10 MR. GUILLAUME: Correct, Your Honor. And I'll make
11 that motion and submit without argument.

12 THE COURT: Submit for argument. And that'll be
13 denied just so the reasons are clear.

14 The standard in ruling upon a Rule 29 motion for the
15 court is, if upon the viewing the evidence in the light most
16 favorable to the government any rational trier of facts could
17 have found the defendant guilty beyond a reasonable doubt, there
18 certainly -- and that's under the United States versus Tresvant
19 677 F.2d 1018, a Fourth Circuit opinion of 1982, as well
20 as United States versus Romer, 148 F.3d 359, opinion of the
21 Fourth Circuit 1998 where certiorari was denied.

22 United States versus Wilson in which the Fourth
23 Circuit in 115 F.3d 1185 Fourth Circuit opinion in 1997 noted
24 that the government is allowed all benefitted, reasonable
25 inferences at this stage. And even the uncorroborated testimony

1 of a single witness is enough to deny Rule 29 motion.

2 Here you have testimony of specific individuals who
3 have linked an established -- or testified as to Mr.
4 Igbinedion's involvement in the conspiracies charged in Count 1
5 and the respective mailings as charged in Counts 4, 5, 6, and 7;
6 they include Mr. David Green, Amaya English, McArnold
7 Charlemagne, Sooraj Paliwal, Leevensky Lambert. All of those
8 witnesses specifically addressed to Mr. Igbinedion's involvement
9 in the alleged conspiracy as well as the mail fraud that's
10 charged here. So the evidence is certainly sufficient to be
11 presented to the jury for the jury to make a determination in
12 that regard. So motion for Rule 29 motion is denied.

13 I would note, just for the record Mr. Guillaume, that
14 pursuant to Rule 29(c)(1)(3) the defendant is not required to
15 move for a judgment of acquittal under Rule 29 even after the
16 close of all the evidence. Just so the record is clear, you've
17 made your motion and preserved your issues in that regard. Any
18 and all pretrial motions are also preserved in terms of even by
19 prior counsel.

20 Now with respect to the presentation of a case by the
21 defense, you have previously indicated -- we arranged for Ms.
22 Jones to testify based upon our discussion earlier here today.
23 You previously indicated that perhaps Keirah Fallon was going to
24 testify, or DiAngelo Sawyer. Are either of those people going
25 to testify?

1 MR. GUILLAUME: No, Your Honor. We have one witness
2 who we worked an agreement with the government, Special Agent
3 Bender.

4 THE COURT: Okay. So you'll be calling Special Agent
5 Bender to the stand; is that right?

6 MR. GUILLAUME: To ask a very narrow set of questions.

7 THE COURT: That's fine. So we'll proceed -- we'll
8 note to the jury that we're going to proceed now with the
9 defense case and we'll call Agent Bender. And then once that's
10 concluded we will then -- as we speak now, your client is not
11 intending to testify; is that correct?

12 MR. GUILLAUME: Correct, Your Honor.

13 THE COURT: All right. Well, again, I'll go over
14 Advice of Rights with him again after we finish Agent Bender's
15 testimony, in case for some reason there was some portion that
16 he would want to -- you know, just we'll make sure that we
17 discuss this after all the evidence is closed.

18 So with that, I think we're ready to have the jury
19 come back in and the defense will call Agent Bender. Yes.
20 Thank you.

21 (Jury entered the courtroom at 2:32 p.m.)

22 THE COURT: Thank you all very much. You all may be
23 seated. Thank you very much.

24 Now, with that, formally now once again in front of
25 the jury, Mr. Delaney, the government is now resting; is that

1 correct?

2 MR. DELANEY: The government rests, Your Honor.

3 THE COURT: The government is now resting. And now
4 I'll call upon the -- call upon the defendant with respect to
5 putting on its case.

6 Mr. Guillaume, your first witness.

7 MR. GUILLAUME: Your Honor, the defense would call
8 Special Agent Jason Bender.

9 THE COURT: Agent Bender, if you'll come forward,
10 please sir.

11 (JASON BENDER, duly sworn.)

12 THE CLERK: While speaking clearly into the
13 microphone, can you state your full name and spell your last
14 name for the record?

15 THE WITNESS: Jason Bender, B-e-n-d-e-r.

16 THE CLERK: Thank you.

17 THE COURT: You may proceed, Mr. Guillaume.

18 MR. GUILLAUME: Thank you.

19 DIRECT EXAMINATION

20 BY MR. GUILLAUME:

21 Q. Good afternoon, Special Agent Bender.

22 A. Good afternoon, sir.

23 Q. Special Agent Bender, I just have a few questions for
24 you. You are the case agent for this particular matter; is that
25 correct?

1 A. Correct.

2 Q. Meaning that you're the lead person in charge from
3 your agency?

4 A. Correct.

5 Q. Sir, you had the opportunity to participate in the
6 arrest of McArnold Charlemagne, or actually I'll phrase it, you
7 actually notified him that there was a warrant for his arrest in
8 December of 2019; is that right?

9 A. Correct.

10 Q. He informed you, Mr. Charlemagne did, he was in New
11 York City; is that correct?

12 A. He stated New York. I can't recall New York City
13 specifically, but he told me he was in New York.

14 Q. Okay. You advised him that he must turn himself in;
15 is that right?

16 A. Correct.

17 Q. And he turned himself in actually in Baltimore the
18 following day; is that correct?

19 A. Correct. Yes.

20 Q. Special Agent Bender, you are obviously familiar with
21 my client, Mr. Igbinedion, correct?

22 A. Yes.

23 Q. He was arrested in March of 2021, right?

24 A. Correct.

25 Q. At the time of his arrest he was residing or living in

1 Pennsylvania; is that right?

2 A. Yes.

3 Q. And you were aware that he had been living in
4 Pennsylvania since 2019?

5 A. I'm aware at some point in 2019 he relocated to
6 Pennsylvania.

7 Q. And sir, my last question is, during the course of
8 this investigation you became aware that actors from other
9 countries possibly were involved -- other than the U.S. -- were
10 possibly involved; is that right?

11 A. Yes.

12 Q. Thank you.

13 MR. GUILLAUME: No further questions.

14 THE COURT: Any follow-up on those questions by you,
15 Mr. Delaney?

16 MR. DELANEY: No, Your Honor. Thank you.

17 THE COURT: All right. Thank you, Special Agent
18 Bender, you may step down. This was quick and you may return to
19 your seat. Thank you very much.

20 All right. Mr. Guillaume, I think -- I'm sorry,
21 ladies and gentlemen, we need to have you step out of the room
22 again now. I'm sorry, we have to do it in terms of -- just
23 don't even sit down, just go back in the room and stand there
24 for a minute. Go back and stretch your legs. We can have you
25 go in a circle in the juror room, go around in circles. We're

1 laughing here. Just keep your legs moving.

2 (Jury exited the courtroom at 2:35 p.m.)

3 THE COURT: Mr. Guillaume, are there any other
4 witnesses that you intend to call?

5 MR. GUILLAUME: No further witnesses, Your Honor.

6 THE COURT: Any other exhibits to present?

7 MR. GUILLAUME: No other exhibits, Your Honor.

8 THE COURT: And do you have -- I want to advise you,
9 Mr. Igbinedion, of your rights. You've had a right to
10 compulsory process of witnesses. And with respect to bringing
11 witnesses forward we made the step here today to make sure that
12 Ms. Jones' testimony was presented.

13 You have an absolute right to testify and an absolute
14 right not to testify.

15 I want you to note that if you choose -- if you choose
16 not to testify in this case, I will specifically instruct the
17 jury as follows in terms of jury instructions. If you choose
18 not to testify in this case the jury will be instructed as
19 follows:

20 The defendant chose not to testify in this case.
21 Under our constitution a defendant has no obligation to testify
22 or to present any evidence because it is the government's burden
23 to prove a defendant guilty beyond a reasonable doubt. A
24 defendant is never required to prove that he or she is innocent.

25 And I'll also add this. The burden is always upon the

1 prosecution to prove guilt beyond a reasonable doubt and that
2 burden never shifts to a criminal defendant. I'm going to add
3 that language. Therefore, you must not attach any significance
4 to the fact that a defendant -- I'll say Mr. Igbinedion, did not
5 testify. No adverse inference against him may be drawn by you
6 because he did not take the witness stand, and you may not
7 consider that in any way in your deliberations in the jury room.

8 Do you understand that I'm going to advise the jury in
9 that fashion? Do you understand that, sir?

10 THE DEFENDANT: Yes, sir. Understood, sir.

11 THE COURT: All right. And having discussed this
12 matter with your attorney, Mr. Guillaume, it's your decision not
13 to testify; is that correct?

14 THE DEFENDANT: Are you speaking to me?

15 THE COURT: Is it your decision to testify or not to
16 testify?

17 THE DEFENDANT: Yes, it is, sir. It's my decision to
18 not testify, sir.

19 THE COURT: All right. And you've chosen not to
20 testify; is that correct?

21 THE DEFENDANT: Correct, sir.

22 THE COURT: Okay. The defendant is aware of his right
23 to testify and had made a knowing and intelligent decision in
24 his own view not to testify.

25 Is there anything further from the point of view of

1 government on this matter?

2 MR. DELANEY: No, Your Honor.

3 THE COURT: Mr. Guillaume, are there any other points
4 you want me to attach here on this?

5 MR. GUILLAUME: No, Your Honor.

6 THE COURT: All right. Then I'm going to bring the
7 jury back in and I'm going to advise them that that concludes
8 the case, and that we will be attending to legal matters here
9 this afternoon. And that they should be here tomorrow and that
10 we will have the closing arguments tomorrow. That will start at
11 9:30 and the case will proceed to trial starting with closing
12 arguments at 9:30.

13 we're going to make every effort to make sure the
14 closing arguments are completed in the morning and I charge the
15 jury before lunch, and then they'll be out for lunch and then
16 we'll await the return of the verdict. And I'll be here in the
17 courthouse, and if for some reason I'm on the panel with the
18 judges downstairs for the admission of some of the law clerks,
19 I'll just recess and come back up here. So that's what we'll
20 do.

21 Unless there's anything further, we're going to bring
22 the jury back in and send them home. All right. If you'll
23 bring in the jury, please.

24 MR. GUILLAUME: Should I formally rest in front of the
25 jury?

1 THE COURT: Yes. Yes. Yes, you'll formally rest.

2 (Jury entered the courtroom at 2:40 p.m.)

3 THE COURT: All right. With that, you all may be
4 seated quickly for just a few moments.

5 Mr. Guillaume, the defense now rests; is that correct?

6 MR. GUILLAUME: That is correct, Your Honor.

7 THE COURT: Is there anything further from the
8 government?

9 MR. DELANEY: No, Your Honor.

10 THE COURT: With that, Mr. Guillaume, in terms of the
11 Rule 29 motion that's renewed, I'll just treat that as I did
12 before.

13 MR. GUILLAUME: Thank you, Your Honor.

14 THE COURT: So with that, ladies and gentlemen, we
15 have concluded this trial and we're going to excuse you early,
16 and you're going to be able to go home early today. And you'll
17 be due back here tomorrow morning; try to get here by 9-ish, ten
18 after nine. We're going to do our very best to get started
19 right at 9:30. We'll have closing arguments tomorrow and then I
20 will give you instructions on the law after the closing
21 arguments just as -- there are certain things that happened last
22 week that you don't see on television.

23 At the end of closing arguments I actually instruct
24 you on the law. And I can ensure that the TV ratings would go
25 through the roof -- through the floor if you watched this on TV,

1 but that's a very important part of process.

2 I instruct you on the law, you determine the facts and
3 apply the law as I instruct you, but we'll give you instructions
4 on that. And I'm going to go over these legal matters with the
5 lawyers now this afternoon. So we will see you back here
6 tomorrow ready to go at 9:30.

7 One of the first things you'll do, is that
8 Mr. Gurevich will have a menu for lunch ready for them.
9 Correct?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: And I say we buy you lunch, but the fact
12 of the matter is, you pay for everything that happens here
13 anyway. So we're not really buying you lunch, we're using your
14 tax dollars to buy you lunch. So I always tell the jury we buy
15 you lunch, we are you, but everything is run by tax dollars
16 here.

17 So we fill out your lunch menu and then you proceed
18 and hear arguments. And while that's occurring, sometime later
19 in the morning, lunch will be brought over for you and then
20 you'll have lunch all together back in the jury room. So I want
21 to thank you all --

22 Yes, ma'am. Juror No. 4, yes?

23 JUROR NO. 4: Just for hotel, like, purposes, do you
24 think this will go over to Friday?

25 THE COURT: In terms of hotel reservations and what

1 have you?

2 JUROR NO. 4: Yeah.

3 THE COURT: I just don't know. Just stay where you
4 are, don't go checking out or anything, just standby. Just
5 standby. The government pays for all that, but just standby.
6 It just depends, that's all.

7 JUROR NO. 4: Well, they won't pay for it if I
8 renew --

9 THE COURT: Mr. Gurevich will handle that. He
10 guarantees payment of anything. He'll guarantee it if not paid.
11 You still guarantee this, Denis; is that right?

12 (Laughter.)

13 JUROR NO. 4: Perfect. Thank you.

14 THE COURT: Just so with that, don't worry about that.
15 Don't go checking out of your hotel or anything. So with that,
16 you all are excused and I'll stay up here on the bench. Thank
17 you all very much. Thank you.

18 (Jury dismissed from the courtroom at 2:42 p.m.)

19 THE COURT: Okay. With that, the -- we're going to
20 have a charge conference now.

21 Mr. Igbinedion, you are allowed to stay here for this.
22 You don't have to stay here for this, this is the lawyers going
23 over legal issues in terms of how the jury will be instructed.
24 I think it's probably -- my view is it's advisable if you do
25 stay here, and just in case you have any input you want to give

1 Mr. Guillaume as we proceed. You just can sit and quietly
2 listen. Your mother is certainly welcome to stay as well, and
3 we go over how the jury is to be instructed on the law.

4 And with that counsel, we'll -- Ms. Hudson, my law
5 clerk, is photocopying the first draft of instructions here, and
6 I've started to go through some of them.

7 I will just preface this by noting -- I'm going to
8 take a quick recess in a minute. I'll preface this by noting --
9 you all may be seated for a moment.

10 I talk to the jurors after every jury trial. And I
11 will tell you that on more than one occasion jurors have said
12 that the jury instructions are mind numbing.

13 Could you -- thanks.

14 Ms. Hudson has -- these are just -- give that to
15 counsel. Thank you.

16 She's going to give these out to you now, this draft
17 of these instructions. And you do not need -- what we'll do is,
18 you do not need to --if you have -- if you have any lengthy
19 presentation, if you have any lengthy presentation then stand.
20 Otherwise, you can remain seated as we go through these.

21 Just caution you with one thing. In an abundance of
22 caution we printed out a whole group of these, but some of these
23 we're going to edit out.

24 The one thing I will tell you, when I talk to all the
25 jurors, and's important for you all, it usually is discounted

1 here --

2 Elizabeth, you can take this and we'll go through.
3 There you go.

4 It is usually discounted, but as one of the jurors
5 said, it is basically brain numbing. And the point is, is that
6 no matter how many times I tell lawyers more is not better,
7 lawyers always want to push for this instruction and that
8 instruction. At some point in time it's counterproductive. I
9 always at least say that to the jurors. I'm trying to keep
10 these as tight as I can to instruct on the points that are
11 important, but not just have needless verbiage because it just
12 overwhelms them.

13 And it's in everybody's interest, and particularly the
14 defendant's interest, to have the jury focus upon those
15 instructions that are very important. And it's not in anybody's
16 interest to have the instructions essentially be swallowed up
17 because there are so many of them. And so I just -- we just
18 note that for what it's worth. Sometimes it -- it seems
19 somewhat futile, but I usually try to do that anyway just to try
20 too move things along.

21 With that, looking at the draft here, some of these
22 are really not applicable, but we're going to go through and I
23 just hope that you all take to heart what I've said about the
24 purpose here is try to narrow these down to be in a workable
25 format, specifically applicable to this particular case.

1 All right. With that, we'll page through.
2 Instruction Number 1 in terms of juror attentiveness. I think
3 that's a boiler plate, that's standard, that must be given.

4 Role of the Court, Number 2. These are all Sand and
5 Siffert modern federal jury instructions as recently updated.

6 Role of the Court, role of the jury. I would note
7 that in the role of the jury, Number 3, there is -- there are no
8 stipulations so we'll take that language out, "You may also
9 consider the stipulations of the parties as evidence." There
10 are no stipulations.

11 I'll also note on Standard Number 3 that, "I asked you
12 to draw no inference on occasion if I've asked questions." I
13 have not asked questions here.

14 So no objection to Standard -- the Standard 1 and 2
15 from the government, correct?

16 MR. DELANEY: None, Your Honor.

17 THE COURT: From the defense?

18 MR. GUILLAUME: No, Your Honor, no objection.

19 THE COURT: Now on 3 -- on 3 I'm going to cross out on
20 page 3, "You may also consider stipulations of the parties as
21 evidence," but there aren't any stipulations.

22 I'm also going to cross out the following sentences in
23 that first full paragraph where it says, "I also ask you to draw
24 no inference on the fact that upon occasion I ask questions of
25 certain witnesses." That's not applicable, I did not.

1 These questions are only intended, et cetera, et
2 cetera. I'm lining that as well.

3 So that paragraph would just be lumped together,
4 Elizabeth.

5 At the end it'll be, "You're expressly to understand
6 the court has no opinion as to the verdict you should render in
7 case," and put that together at the end.

8 By the way, I let the jury know that one of my
9 colleagues suggests I should do this. Judge Hollander says
10 don't let them know they're all going to have copies because
11 they won't pay attention. I do let them know they're going to
12 have copies because it does get overwhelming, but I don't let
13 them have copies otherwise they really would tune me out.

14 So I tell them just to listen carefully, but they will
15 have copies. Each one will have their own copy, but that's
16 Instruction Number 3.

17 And then Number 4, juror obligations is fine.

18 The government as a party is standard.

19 Conduct of counsel. No objections to 4 or 5 as well
20 from anyone, correct?

21 MR. DELANEY: No, Your Honor.

22 MR. GUILLAUME: No, Your Honor.

23 THE COURT: All right. So it is -- in terms of
24 conduct of counsel, I really -- I'm not even sure if this is
25 necessary. There really weren't a lot of objections here or

1 contentious issues or bench conferences. Does anybody feel we
2 really need this?

3 MR. DELANEY: The government does not. I'll defer to
4 Mr. Guillaume.

5 THE COURT: Mr. Guillaume, do you think we need this?

6 MR. GUILLAUME: I don't, Your Honor.

7 THE COURT: well, we'll take this out then. That's a
8 good start. So we'll take this unnecessary verbiage out. I'll
9 take that out and we'll renumber these. Number 6 is out.

10 Number 7 will clearly be given in terms of any
11 improper considerations based upon -- Number 7, in terms of your
12 verdict, must be based solely upon the evidence developed at
13 trial or the lack of evidence. Any concerns about race,
14 religion, national origin, sex, or age -- we're going to give
15 that in its totality.

16 Number 8, sympathy. That'll be given in its totality
17 as well.

18 Number 9, jury to consider only this defendant.
19 That'll be given in its totality.

20 Any objection to those from the point of view of the
21 government?

22 MR. DELANEY: No, Your Honor.

23 THE COURT: From the defense?

24 MR. GUILLAUME: No, Your Honor.

25 THE COURT: All right. We're up to Draft Number 10,

1 contact with others. I've already told them that this is --
2 again, this is a lot of verbiage. I just don't really think
3 it's -- I've strongly admonished them about this when we
4 started, just with any contact with others or the internet or
5 what have you. Does the government feel I need to give this
6 instruction?

7 MR. DELANEY: One moment, Your Honor.

8 MS. GOO: Your Honor, I think this would only be
9 appropriate at the end of the day if they continued their
10 deliberations after tomorrow. Just a reminder that --

11 THE COURT: I always remind them of that.

12 MS. GOO: Yes. I don't think it's necessary during
13 the charge.

14 THE COURT: Mr. Guillaume, do you think this is
15 necessary?

16 MR. GUILLAUME: I don't, Your Honor.

17 THE COURT: So we'll take that out. And certainly,
18 counsel, if they go home Thursday night after deliberations and
19 they come back Friday I'll remind -- I will give that again.
20 I'll remind them.

21 Then Instruction Number 11, presumption of innocence
22 and burden of proof is clearly an important instruction and
23 that'll be given in its totality.

24 Instruction Number 12, number of witnesses and
25 uncontradicted testimony is Number 12. I'm going to give that

1 in its totality in light of the limited number of witnesses
2 called by the defense. I'll give that indicating that the
3 number of witnesses and uncontradicted testimony does not
4 control.

5 Number 13. I don't think 13 is applicable either.
6 Specific investigative techniques, that really hasn't been an
7 issue here.

8 MR. DELANEY: Your Honor, based on the questioning, I
9 don't see it being an issue. If Mr. Guillaume makes an argument
10 in closing, I might reserve the right to change my opinion, but
11 I don't see --

12 THE COURT: Mr. Guillaume, do you think we need to
13 give this?

14 MR. GUILLAUME: I don't, Your Honor.

15 THE COURT: All right. I'm not going to give that one
16 either.

17 Direct and circumstantial evidence. I've already
18 given this in the preliminary instructions, but I think I need
19 to give this again in terms of direct and circumstantial
20 evidence. I'll give that in its totality.

21 Instruction Number 15, a lawyer's questions are not
22 evidence. I hate this instruction. I don't want to give it. I
23 can't stand the one about when did you stop beating your wife?
24 That's just an ugly example that's in this form here. I don't
25 -- I don't think that -- I don't have any sense that either side

1 has asked questions that seem to establish facts by question.

2 I'm really not inclined to give this, but if the government or
3 defense wants me to give it, I'll give it.

4 MR. DELANEY: I suppose for the benefit of the record
5 I might ask that we just give the first paragraph, but I don't
6 feel strongly, Your Honor, I'll be honest.

7 MR. GUILLAUME: Your Honor, I actually think we should
8 eliminate the question. I think it's a little confusing, quite
9 frankly. And I agree with the Court, I don't like the example.
10 I never liked that question.

11 THE COURT: I don't either.

12 MR. DELANEY: The government agrees.

13 THE COURT: You don't have any -- you'd rather not
14 have any of this given, correct?

15 MR. GUILLAUME: Yes, Your Honor. Mr. Delaney now --

16 THE COURT: Both sides agree we're not going to give
17 15. That's not applicable. Counsel conducted themselves
18 properly and I think that's not necessary.

19 Instruction 16 --

20 15 is out as well, Elizabeth. If we're going too fast
21 put your hand up. Don't hesitate.

22 The evidence in this case consists of the sworn
23 testimony of the witnesses and the exhibits received into
24 evidence. Clearly, we take out stipulations and judicially
25 noticed facts.

1 Exhibits which have been marked for identification but
2 not received may not be considered by you as evidence. That's
3 correct because we did have some transcripts that were shown
4 that aren't going to go in.

5 Similarly, any exhibits or testimony which I've
6 ordered to be stricken. That's not applicable.

7 As I indicated before, only the witnesses' answers are
8 evidence and you're not to consider questions as evidence.

9 Similarly, statements by counsel are not evidence.

10 I'm inclined to redact that down to the following:
11 The evidence in this case consists of sworn testimony of the
12 witnesses, the exhibits that are received in evidence, and the
13 exhibits received in evidence, period. Exhibits which have been
14 marked for identification but not received into evidence may not
15 be considered by you as evidence. Only those exhibits received
16 in evidence may be considered as evidence.

17 As indicated before, only the witness's answers are
18 evidence and you are not to consider a question as evidence.

19 Similarly, statements by counsel are not evidence.

20 You should consider the evidence in light of your own
21 common sense and experience and you may draw reasonable
22 inferences from the evidence.

23 Anything you may have seen or heard about this case
24 outside the courtroom is not evidence and must be entirely
25 disregarded. I think that's how I'm going to word that.

1 Any objection from the government?

2 MR. DELANEY: None, Your Honor.

3 THE COURT: By the defense?

4 MR. GUILLAUME: No, Your Honor.

5 THE COURT: Did you get all that? You lined that out.
6 okay.

7 All right. Then Instruction Number 17 would not be
8 applicable. We don't have any stipulations here so that comes
9 out.

10 Agreed by the government?

11 MR. DELANEY: Agreed.

12 THE COURT: Agreed by the defense?

13 MR. GUILLAUME: Yes, Your Honor.

14 THE COURT: And then charts and summaries. I don't
15 know that we have any charts or summaries so that's not
16 applicable. 18 will be out.

17 19. There's no allegation of admission by the
18 defendant in this. There has been testimony in terms of what
19 the defendant did or did not do, but there has been no -- no one
20 has proffered that the defendant has admitted anything so I'm
21 not going to give that.

22 Any objection by the government?

23 MR. DELANEY: None, Your Honor. This refers to, like,
24 admissions made to like investigators?

25 THE COURT: You certainly don't want this to be given,

1 do you, Mr. Guillaume?

2 MR. GUILLAUME: Not at all.

3 THE COURT: I don't think it's applicable here. I'm
4 not going to give 19.

5 20. As I've said, I'm going to beef this up a little
6 bit. The defendant chose not to testify in this case. I think
7 to personalize this, in fairness, I'm going to have: Mr.
8 Igbinedion chose not to testify in this case. Under our
9 constitution he has no obligation to testify or present any
10 evidence because it is the government's burden to prove him
11 guilty beyond a reasonable doubt.

12 A defendant is never required to prove that he or she
13 is innocent. The burden -- add this, Elizabeth.

14 The burden is always upon the government to prove
15 guilt beyond a reasonable doubt.

16 Do you have that?

17 Period. This burden never shifts to a criminal
18 defendant.

19 Okay, you got that?

20 And then it'll conclude: Therefore, you must not
21 attach any significance to the fact that Mr. Igbinedion did not
22 testify. No adverse inference against him may be drawn by you
23 because he did not take the witness stand, and you may not
24 consider it in any way in your deliberations in the jury room.
25 That will be the instruction to the jury.

1 Satisfactory to you, Mr. Guillaume?

2 MR. GUILLAUME: Yes, Your Honor.

3 THE COURT: And that'll be as modified and puts it in
4 a little bit more personal context here.

5 Do you have all that, Elizabeth?

6 THE LAW CLERK: Yes.

7 THE COURT: You got it? Okay. Good.

8 Then inference. I don't -- I'm not really sure -- Mr.
9 Delaney, does the government want an inference instruction?

10 MR. DELANEY: Just reviewing it, Your Honor.

11 THE COURT: Take your time.

12 MR. DELANEY: I think that I would, Your Honor.

13 THE COURT: All right. I'm thinking what we can do is
14 shorten this a little bit.

15 MR. DELANEY: Okay.

16 THE COURT: During the trial you have -- you've heard
17 the attorneys use the term inference, and in their arguments,
18 they've asked you to infer on the basis of your reason,
19 experience, and common sense from one or more established facts
20 the existence of some other fact.

21 An inference is not a suspicion or a guess, it is a
22 reasonable, logical decision to conclude that a disputed fact
23 exists on the basis of another fact which you know exists.
24 There are times when different inferences may be drawn from
25 facts, whether proved by direct or circumstantial evidence. The

1 government asked you to draw one set of inferences while the
2 defense asked you to draw another. It is for you and you alone
3 to decide what inferences you will draw. That will all be given
4 up to that point.

5 Then the next paragraph reads: The process of drawing
6 inferences from the facts in evidence is not a matter of
7 guesswork or speculation. An inference is a deduction or
8 conclusion which you, the jury, are permitted to draw but not
9 required to draw from the facts which have been established by
10 either direct or circumstantial evidence. In drawing inferences
11 you should exercise your common sense.

12 All that will be given verbatim. I'm going to give
13 that entire instruction, Instruction Number 21.

14 Any objection by the government? Obviously not.

15 MR. DELANEY: No, Your Honor.

16 THE COURT: By the defense?

17 MR. GUILLAUME: I like it, Your Honor, but I
18 understand why the government wants it.

19 THE COURT: But that'll be given in its entirety.

20 In terms of using motive for intent, I don't -- is
21 motive really a question here? I mean, the question is whether
22 or not Mr. Igbinedion was aware of the money and the packages
23 and was involved or not. I'm not really sure if this isn't sort
24 of unnecessary verbiage.

25 MR. DELANEY: I think that the aspect -- yeah, Your

1 Honor, that's a good point.

2 THE COURT: The motive is people are making money. I
3 mean, it's not like there's some question about it, it was about
4 who was involved and who was not involved.

5 MR. DELANEY: Right. You are correct.

6 THE COURT: Well, it's a fairly short instruction.
7 I'll just go ahead and give it. I'll give using motive for
8 intent.

9 Now, witness credibility. This is one that I always
10 try to limit down if I can. It must be clear to you by now that
11 the government and defendant are asking you to draw very
12 different inferences, et cetera, et cetera. I'll give that in
13 its entirety.

14 All right. Now, any objection as to that by the
15 government?

16 MR. DELANEY: No, Your Honor.

17 THE COURT: By the defense?

18 MR. GUILLAUME: No, Your Honor.

19 THE COURT: All right. Then interest in outcome. I
20 don't really know that this is necessary. Does the government
21 feel strongly about this?

22 MR. DELANEY: I think Mr. Guillaume might want it more
23 than I do.

24 THE COURT: Mr. Guillaume, I'm not really sure what
25 the interest in -- how this really fits. I mean, obviously you

1 can attack government witnesses who believe, from your point of
2 view, will get a better sentence from me because of their
3 testifying in some way. Do you feel strongly about this one?

4 MR. GUILLAUME: Your Honor, I think I may want it in.

5 THE COURT: Or if you'd like to modify it in some way,
6 I'll be glad to hear from you.

7 MR. GUILLAUME: I guess, Your Honor, you know, it's no
8 surprise that the defense would probably attack some of the
9 credibility of certain witnesses.

10 THE COURT: Sure.

11 MR. GUILLAUME: I think the other instruction covers
12 that as well, so I --

13 THE COURT: I'll give it. I'll give that, that's
14 fine. Unless you want to reword it, I'll just give that form
15 instruction.

16 MR. GUILLAUME: Right. I mean --

17 THE COURT: Because you have two witnesses who are
18 plea agreements in the case and are awaiting sentencing or
19 whatever. I'm sorry, yes. Two are waiting sentencing, Ms.
20 English is awaiting sentencing --

21 MR. DELANEY: Green and Charlemagne.

22 THE COURT: That's right. Yeah. well, I'll give that
23 entire instruction.

24 Any objection by you to that, Mr. Guillaume?
25 Obviously not, you want this, right?

1 MR. GUILLAUME: No, Your Honor.

2 THE COURT: Okay. All right. Then you have the
3 matter of accomplices called by the government. We have people
4 who have indicated their involvement in the conspiracy and some
5 of them pled guilty. I'm usually always troubled by this a
6 little bit in the case of a conspiracy.

7 It's -- how does the government feel about this
8 instruction? It's very wordy.

9 MR. DELANEY: It is very wordy, Your Honor. There are
10 aspects of it I like and aspects of it I don't like.

11 THE COURT: Well, that's true of everything that
12 happens in the courtroom.

13 MR. DELANEY: In particular, I think the paragraph at
14 the bottom of page 27 is somewhat excessive.

15 MR. GUILLAUME: That's the best one.

16 MR. DELANEY: There it is.

17 THE COURT: I'll give the entire instruction. By the
18 time we try to splice it -- I'll give the entire instruction.

19 Any objection by the government?

20 MR. DELANEY: No, Your Honor.

21 THE COURT: By the defense?

22 MR. GUILLAUME: No, Your Honor.

23 THE COURT: All right. I'm going to give 26 in terms
24 of the fact that someone pled guilty should not be inferred
25 against Mr. Igbiniedion. I'll give Instruction 26.

1 AS to 27, technically the only co-defendant here is
2 Ms. English. She was actually charged in the case. There are
3 other defendants charged in separate cases. I'll give all of --
4 I'll give all of 27 as well.

5 And 28, in terms of law enforcement witnesses, I'll
6 give all of that as well. It's not that long of an instruction.

7 Now, 29. I don't think 29 is applicable here. I
8 don't know of impeachment by either side of prior -- with prior
9 inconsistent statements. I don't think it has any place here.

10 You agree, Mr. Delaney?

11 MR. DELANEY: I do.

12 THE COURT: Mr. Guillaume, do you agree with that?

13 MR. GUILLAUME: Yes, Your Honor.

14 THE COURT: All right. 29 is totally out.

15 Expert witnesses generally. I think if we do this, we
16 ought to wordsmith this a little bit and shorten it. I think
17 what should be said is: In this case I permitted Mr. Fowler to
18 express his opinion about cell phone --

19 How do you want to word it? Express his opinion about
20 cell phone tower site locations? How do you want me to word it,
21 Mr. Delaney? It's called CAST.

22 MR. DELANEY: I have the exact language I used
23 actually.

24 THE COURT: I'll put in this case I permitted Mr.
25 Fowler to express his opinion about?

1 MR. DELANEY: Historic cellular record analysis.
2 cellular record analysis.

3 THE COURT: Cellular record analysis.

4 In this case I approved Mr. Fowler to express his
5 opinion about cellular record analysis, period.

6 He was permitted to testify to an opinion on that
7 matter about which he has special knowledge, skill, experience,
8 and training, period.

9 This testimony was presented to you on the theory that
10 someone who is experienced and knowledgeable in a field can
11 assist you in understanding the evidence or in reaching an
12 independent decision on the facts.

13 Then, in weighing his opinion testimony you may
14 consider his qualifications, his opinions, the reason for
15 testifying, as well as all the other considerations that
16 ordinarily apply when you're deciding whether or not to believe
17 a witness's testimony, period.

18 You may give his testimony whatever weight, if any,
19 you find it deserves in light of all the evidence in the case.
20 You should not, however, accept opinion testimony merely because
21 I allowed the witness to testify concerning his opinion, nor
22 should you substitute it for your own reason, judgment, and
23 common sense. The determination of the facts in this case rests
24 solely with you.

25 I think that fits the case. Any objection by the

1 government?

2 MR. DELANEY: None, Your Honor.

3 THE COURT: By the defense?

4 MR. GUILLAUME: No, Your Honor.

5 THE COURT: All right. Did you get all that?

6 THE LAW CLERK: Yes.

7 THE COURT: Okay. All right. Then punishment, I'll
8 give that in terms of the question of possible punishment is of
9 no concern; the format. I will give that.

10 An indictment is not evidence. I will give that.

11 33, I will give that; just leads into the case.

12 All right. 34 is not applicable here. There's no
13 other -- there's no other crime evidence that has been proffered
14 here, and I think this is just needless verbiage and it's really
15 confusing.

16 Does the government agree with that?

17 MR. DELANEY: We do.

18 THE COURT: Mr. Guillaume, you agree with that?

19 MR. GUILLAUME: Yes, Your Honor.

20 THE COURT: 34 is totally out, Elizabeth.

21 35, I think, does not fit here. It's not fair to name
22 a defendant or other defendants in the case. I don't think that
23 really fits. You agree, Mr. Delaney?

24 MR. DELANEY: You know, Your Honor, it might fit
25 somebody like Kamisha Jones we just heard from.

1 THE COURT: Well, I mean, there have been other
2 witnesses who have been involved in it, and the jury -- some
3 have pled guilty, some have not. Some have proffer agreements,
4 some did not.

5 You agree with that, Mr. Guillaume?

6 MR. GUILLAUME: I agree with the Court, Your Honor,
7 yes.

8 THE COURT: I don't see -- it's really not fair to
9 name a defendant. There are some people who testified who
10 clearly pled guilty. Ms. English has plead guilty and she's
11 going to be sentenced. Ms. Jones did not plead guilty and she
12 was not -- I mean, so I don't know whether to get in the failure
13 to name a defendant is -- I think it just -- it's needless
14 confusion, I think. I'll take that out.

15 MR. DELANEY: Can I reserve my right to bring it in
16 again after closing if anything arises in closing?

17 THE COURT: Sure, you can address that. I don't think
18 that'll come up.

19 MR. DELANEY: Thank you.

20 THE COURT: I mean, the reality is, it's quite clear
21 that some people were prosecuted and pled guilty in this matter,
22 and there are others who committed certain acts and they were
23 committed to make proffers. One of your witnesses made a
24 proffer and was not prosecuted and was given immunity.

25 Ms. Jones, who testified today, acknowledged picking

1 up packages, but really -- she indicated she wasn't -- she knows
2 there was some money in them. I don't know that we need to go
3 over this Instruction 36, the nature of indictment.

4 MR. GUILLAUME: I would agree, Your Honor.

5 MR. DELANEY: Agree.

6 THE COURT: All right. We'll take that out.

7 Then multiple counts. I'll give that so they make
8 sure they understand they have to address each count separately.

9 And then variance of dates, Instruction 38, I'll give.

10 All right. Then Count 1, conspiracy. Okay. And what
11 we've done is, I choose to redo the indictment as opposed to
12 giving the indictment that goes in because I've always been
13 uncomfortable with the charging wording in the indictment with
14 respect to the grand jury charging. So we just summarize it
15 here.

16 And any objection by the government to Instruction 39?

17 MR. DELANEY: No, Your Honor.

18 THE COURT: By the defense?

19 MR. GUILLAUME: No, Your Honor.

20 THE COURT: All right. Now, on Count 1, conspiracy,
21 purpose of the statute. I will give the basic purpose of the
22 statute instruction.

23 Although, I don't know. I think this is -- I don't --
24 this is -- I think this is unnecessary verbiage here. I'm about
25 to go into the elements of conspiracy and there's no sense that

1 there was a conspiracy, even the conspiracy was not actually
2 committed. Clearly conspiracy was committed.

3 Mr. Guillaume, you don't have any desire for this
4 instruction, do you?

5 MR. GUILLAUME: Are we talking about Number 39, Your
6 Honor?

7 THE COURT: 40. Number 40.

8 MR. GUILLAUME: Sorry, I was one behind.

9 THE COURT: The purpose of the statute.

10 MR. GUILLAUME: Yes, I don't like it.

11 THE COURT: I don't really see the need to give it,
12 Mr. Delaney. We're going to give the elements. I'll take that
13 out. 40 is out.

14 MR. DELANEY: The argument I would make, if for some
15 reason the jury has difficulty with counts of individual mail
16 fraud that they're still instructed --

17 THE COURT: well, I'm going to instruct them they have
18 to reach each count separately.

19 MR. DELANEY: Okay, Your Honor.

20 THE COURT: And Instruction Number 41, I'll give,
21 elements to conspiracy.

22 I'll give all of 42 in terms of the nature of the
23 agreement.

24 And I'll give all of 43, membership in the conspiracy.
25 And that is very wordy, but we just can't get it any shorter.

1 I'll take a look at 43 now. I'll give all of 43.

2 Now, on 44, I don't know that we -- do we have a lot
3 of acts of declarations by the coconspirator? We have
4 statements as to who was doing what. I'm not really sure if
5 this fits.

6 MR. DELANEY: I think we have plenty of statements of
7 coconspirators in this case, whether or not the instruction is
8 important I defer to the court.

9 THE COURT: Mr. Guillaume, do you want this
10 instruction?

11 MR. GUILLAUME: Sorry, Your Honor, I'm lost again.

12 THE COURT: It's now Number 44.

13 MR. GUILLAUME: Talking to my client, Your Honor. I'm
14 sorry.

15 THE COURT: Take your time. Take your time.

16 MR. GUILLAUME: Yes, Your Honor. I don't believe
17 there was a lot of -- I mean, there's coconspirator statements,
18 but those were admitted. And, I mean, it's part of the overall
19 conspiracy. I don't think -- I'm not gonna --

20 THE COURT: I'm not really sure if this fits is what
21 I'm saying in this case.

22 MR. GUILLAUME: I would agree.

23 THE COURT: I'm taking 44 out. I don't think that
24 really fits.

25 All right. You with me over there?

1 All right. 45. Conscious avoidance, deliberately
2 closing an eye. I don't see where that's been involved in this
3 case.

4 MR. DELANEY: Your Honor, I think it's relevant.

5 THE COURT: This is like the willful blindness
6 instruction.

7 MR. DELANEY: I think it's relevant to the not opening
8 up of packages.

9 THE COURT: All right. I will give that. In fairness
10 to the government I will give it. It calls for -- it's up to
11 the jury to determine whether or not the defendant was aware of
12 what was going on. I'll give all of 45.

13 Now, multiple counts, 4 through 7, mail fraud. What I
14 want to say is, is that Counts -- I think in order to word this
15 and so it fits here, I think what we should do is say:

16 Counts 2 and 3 are not being submitted to the
17 government and you should not concern yourself with the reasons
18 for that, period.

19 And then Counts 4, 5, 6, and 7 of the Superseding
20 Indictment, each charge that the defendant devised a scheme to
21 defraud. And then off to the races we go with the four counts.

22 Does that make sense to the government?

23 MR. DELANEY: Yes, Your Honor.

24 THE COURT: Mr. Guillaume, do you?

25 MR. GUILLAUME: Yes, Your Honor.

1 THE COURT: Okay. So that's how that's going to be
2 worded, Elizabeth. Did you get the language there? We'll
3 reword that in that fashion. And the elements are all the same
4 as to those four counts.

5 And then we will have the Instruction Number 47 will
6 be given. The purpose of the statute as what we're doing for
7 conspiracy.

8 We'll give elements 48 which is the same.

9 MR. DELANEY: Your Honor, were you giving instruction
10 47?

11 THE COURT: Yes. Yes, I'm going to.

12 MR. DELANEY: I would actually note that I think all
13 the packages in this case are commercial carriers; UPS or FedEx,
14 so we might want to change the language.

15 THE COURT: Okay. That's fine. Provided by the
16 United States Postal Service or Federal Express?

17 MR. DELANEY: I think it's --

18 THE COURT: You mean in Instruction Number 47.

19 MR. DELANEY: For private or commercial -- or
20 commercial interstate carriers.

21 THE COURT: All right. So the purpose -- Instruction
22 47 -- you're on 47, right?

23 Mr. Delaney, I'm just trying to get the wording you
24 wanted. Are you on Instruction 47?

25 MR. DELANEY: We are. We're just trying to make sure

1 we have the wording right.

2 THE COURT: I'll do it right here.

3 The purpose of the Federal Mail Fraud Statute is to
4 prevent use of the facilities and services provided by the
5 United States Postal Service, comma, Federal Express or any
6 other commercial carriers for fraudulent purposes.

7 MR. DELANEY: That works for us.

8 THE COURT: And then a scheme to defraud -- did you
9 get that?

10 THE LAW CLERK: Yes.

11 THE COURT: A scheme to defraud may be punished under
12 the federal mail fraud statute, whether or not it also violates
13 state law.

14 Any objection to that, Mr. Guillaume?

15 MR. GUILLAUME: No, Your Honor.

16 THE COURT: All right. So that'll be 47 as modified.

17 And then as to each one of these Counts 4, 5, 6, and
18 7, each individually -- viewed individually, and that'll be
19 given.

20 48 will be given.

21 49 will be given. Now, 49 is ungodly long. 49 is
22 that the first element that the government must prove beyond a
23 reasonable doubt is that there was a scheme or artifice to
24 defraud. It'll be a scheme, artifice to defraud persons of
25 money or property by means of false or fraudulent pretenses,

1 representations, or promises.

2 The first element is almost self-explanatory. The
3 scheme or artifice is merely a plan for the accomplishment of an
4 object.

5 well, that first page is fine, but I think a lot of
6 this can be really narrowed down. There really isn't any
7 dispute about the scheme and artifice to defraud, the question
8 is whether Mr. Igbinedion was a part of it.

9 At the bottom of page 56 is fraudulent if it was
10 falsely made with the intent to deceive. The next sentence,
11 Deceitful statements of half-truths or the concealment of
12 material facts in the expression of an opinion not entertained,
13 that doesn't fit here. We'll take that language out.

14 You agree with that, the government.

15 MR. DELANEY: (Nods head up and down.)

16 THE COURT: The next paragraph, short paragraph,
17 deceitful statements of half-truths and the concealment of
18 material facts. That doesn't fit here. You agree, Mr. Delaney?

19 MR. DELANEY: We agree.

20 THE COURT: All right. That'll come out.

21 You agree, Mr. Guillaume?

22 MR. GUILLAUME: Yes, Your Honor.

23 THE COURT: Then the next paragraph would read: The
24 deception need not be premised upon spoken or written words
25 alone. The arrangement of words or circumstances -- I don't --

1 that's not what's involved here. we'll take that whole
2 paragraph out.

3 The false or -- to a fact of the matter -- I don't
4 think that matters. That's really not in dispute.

5 MR. DELANEY: I don't think it's in dispute, but I
6 think that it might be necessary for completion of the elements
7 that it must be material. I agree that it's not in dispute, but
8 I think it might be necessary.

9 THE COURT: The matter of the false or fraudulent
10 representation must relate to a material fact or matter. What's
11 a material fact or matter, that there are lies about
12 grandchildren?

13 MR. DELANEY: I completely agree that it's not in
14 dispute, I only feel that if someone looks at the record later
15 and it's important that it was material, and we didn't advise
16 the jury they would say we didn't advise them and it would be
17 material. We could cut out what the definition of material is.
18 We could also --

19 THE COURT: I'll keep the paragraph, The false or
20 fraudulent representation or failure to disclose must relate to
21 material fact or matter. A material fact is one that would
22 reasonably be expected to be of concern, et cetera. I'll keep
23 that whole paragraph in because the rest of this is going to
24 start coming out.

25 This means that if you find a particular statement of

1 fact to have been false, you must determine whether or not the
2 statement is one that a reasonable person or investor may have
3 or could have important -- that whole paragraph is wordy. It's
4 unnecessary, it's out.

5 The representations the government charged or made as
6 part of a scheme to defraud is set forth in paragraph 3 of the
7 indictment, which I've already read to you. It is not required
8 that every misrepresentation charged in the indictment be proved
9 to sufficiently, et cetera, that stays in.

10 The rest of paragraph -- page 57 stays in. Okay.

11 Then the paragraph at the top of page 58, here now, I
12 think we can take out that sentence on page 58. Although,
13 whether or not the scheme actually succeeded is really not the
14 question. That's clearly not applicable here.

15 You may consider whether it succeeded in determining
16 whether the scheme existed. We're going to take that sentence
17 out.

18 So on page 58 that sentence is taken out, Elizabeth,
19 everything else stays the same.

20 Okay. Then multiple counts 4, 3, 7. Participate in
21 the scheme knowingly, willfully, and with specific intent to
22 defraud. We'll keep that language -- knowingly, willfully
23 intent -- in.

24 I'll give all of 50. It's very wordy but I'll give
25 it. I think it's necessary at the end here.

1 And I'll give all of 51, that's boiler plate.

2 52. standard, give that. 52.

3 All right. We're missing one. Need -- we're missing
4 one last one, are we not? Something about the appointment of
5 the juror.

6 Then what we'll do is, in addition to duty, consult,
7 need for unanimity, somewhere there's a boilerplate one that we
8 sort of just missed here that -- wait a minute, hold on.

9 THE LAW CLERK: I don't think it's in there.

10 THE COURT: Wait a minute. There's definitely a form
11 -- there's a form instruction.

12 The wording will be that I'll indicate that Juror No.
13 3 is going to go the foreperson. And the government -- has the
14 government submitted a verdict sheet?

15 MR. DELANEY: I believe we have, Your Honor.

16 THE COURT: I'll take a look. I think you did as a
17 matter of fact. Hold on. Yeah. wait a minute. Here we go,
18 yes. You have the verdict sheet. It seems pretty
19 self-explanatory.

20 Any objection by you, Mr. Guillaume?

21 MR. GUILLAUME: No. I've seen it, I don't have any
22 objection.

23 THE COURT: That's fine.

24 what I'll do, the form we're looking for is that when
25 I get to the matter of the duty of the jury, I'll note that

1 Juror No. 3 is the foreperson, and I'll just say that counsel
2 and I have agreed upon her appointment as the foreperson.

3 And then, Mr. Guillaume, I'll just say that I noticed
4 that Juror No. 3 has had prior jury experience, as has 5, and
5 Juror No. 3 had criminal and so I think she's the most
6 appropriate one. The jurors really do expect to understand why
7 we've done that. So your objection is as to my explaining why.
8 I don't think it heightens her status at all. whoever is
9 foreperson takes a leadership role at any time in a case. So I
10 will give that.

11 And there's no objection as to her being the
12 foreperson, the defense objects to my trying to explain to the
13 jury exactly why she's being picked, but I'll do that as I
14 normally do.

15 As we're waiting for that form language on the
16 foreperson, any other thoughts, questions from the government?

17 MR. DELANEY: No, Your Honor. Thank you.

18 THE COURT: From the defense?

19 MR. GUILLAUME: Just with closing, Your Honor, are we
20 going to have the benefit of the podium that we had for opening?

21 THE COURT: Basically, you're going to do it exactly
22 as we did for opening statement. You're going to have the same
23 table to --

24 This format, by the way, when you retire Juror No. 3
25 shall be your foreperson. That is the person who will preside

1 over the deliberations and who will be your spokesperson here in
2 court. The foreperson runs the meeting, controls deliberations,
3 and communicates with the court. If you need to communicate
4 with me, it should be by a written note signed by the
5 foreperson. And I'll note that there's a verdict sheet that
6 we're giving them.

7 Yes, Mr. Guillaume, we'll have the same podium that we
8 had for opening statements last Friday. And to the extent, if
9 there's any need, if anyone intends to do a PowerPoint
10 presentation, you need to make sure you coordinate with
11 Mr. Gurevich ahead of time.

12 My strong recommendation is, come over early, make
13 sure it works. If he has to have IT come up, that's fine, we
14 get it ready to go. There's nothing worse than we all stop and
15 wait because of some glitch. So I always presume there's a 45-
16 to 50-percent chance there's going to be a glitch. That's just
17 me. And turns out to be 30 percent of time there is a glitch
18 somehow. So make sure that the PowerPoint can go.

19 Mr. Guillaume, are you going need a PowerPoint of any
20 kind?

21 MR. GUILLAUME: Yes, Your Honor. I think counsel is
22 going to help me with the remote control graciously.

23 THE COURT: Yeah, that's fine.

24 And Mr. Kerrigan -- I take it Mr. Kerrigan is here in
25 the court -- he's not here now, but Mr. Kerrigan will be

1 available to try to coordinate those matters.

2 Okay. Anything else from the point of view of the
3 government, Mr. Delaney?

4 MR. DELANEY: No. Thank you very much.

5 THE COURT: Thank you.

6 Mr. Guillaume, anything further from your point of
7 view?

8 MR. GUILLAUME: No, Your Honor. Thank you.

9 THE COURT: You all have worked hard in this case and
10 it's been a quality presentation of evidence. And as always,
11 Mr. Guillaume, it's nice to have you here.

12 Mr. Igbinedion, you don't have to make any comments to
13 me, but your lawyer worked hard on this case and he worked hard
14 on cross-examination, and I think he presented a -- he's done
15 the best he can on some difficult facts obviously. And it's
16 step-by-step.

17 And I don't hold it against you in any way for wanting
18 to go forward at trial. You have a right to go to trial and
19 that's fine. And we're going to instruct the jury that they are
20 not to hold it against you that you did not testify. I take
21 great pains to make sure they understand that.

22 And with that, I'm comfortable as we go to the jury
23 and I will see you here -- why don't you all try to get here
24 around quarter after nine tomorrow, make sure we're crossing T's
25 and dotting I's, and we'll be ready to go at 9:30.

1 unless there's anything further, that concludes the
2 day and this court stands adjourned.

3 Thank you all very much.

4 (The proceedings adjourned at 3:29 p.m., to be
5 reconvened at 9:00 a.m., June 15, 2023.)
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14 CERTIFICATE OF OFFICIAL REPORTER
15

16 I, Kassandra L. McPherson, Registered Professional
17 Reporter, in and for the United States District Court for the
18 District of Maryland, do hereby certify, pursuant to 28 U.S.C. §
19 753, that the foregoing is a true and correct transcript of the
20 stenographically-reported proceedings held in the above-entitled
21 matter and that the transcript page format is in conformance
22 with the regulations of the Judicial Conference of the United
23 States.
24
25

Dated this 4th day of December 2023.

-S-

KASSANDRA L. MCPHERSON, RPR
FEDERAL OFFICIAL COURT REPORTER

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